

Semi-Presidentialism in a New Post-Conflict Democracy: The Case of Timor-Leste

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DECLARATION OF WORK

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ABSTRACT

This dissertation examines the impact of a semi-presidential system on democratic performance. Does semi-presidentialism encourage institutional cooperation and promote successful democratization, or does it provoke a power struggle, leading to political instability and democratic breakdown? We examine this question in the context of Timor-Leste from 2002-2012. During this time, Timor-Leste experienced a period of cohabitation, divided government and unified majority government. We identify the different levels of institutional conflict during the three periods. We show that there was more conflict under cohabitation than under the other two periods and more conflict under a divided government than under unified majority government. This work provides qualified support for some of the hypotheses associated with semi-presidentialism.

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ABBREVIATIONS

AD	Aliança Democrática (Democratic Alliance)
ADITLA	Associação Democrática para a Integração de Timor-Leste na Austrália (Democratic Association for the Integration of Timor-Leste into Australia)
AMP	Aliança da Maioria Parlamentar (Parliamentary Majority Alliance)
ANP	Acção Nacional Popular (Popular National Action)
APODETI	Associação Popular Democrática Timorese (Timor People's Democratic Association)
APSN	Asia Pacific Solidarity Network
ASDT	Associação Social-Democrata Timorese (Social Democratic Association of Timorese)
BRTT	Barisan Rakyat Timor Timur (Front of the people of Timor-Leste)
CA	Constituent Assembly
CAVR	Comissão de Acolhimento, Verdade e Reconciliação (Timor-Leste Commission for Reception, Truth and Reconciliation)
CIVPOL	(United Nations) Civilian Police
CMATS	Treaty on Certain Maritime Arrangements in the Timor Sea
CNRM	Conselho Nacional da Resistência Maubere (National Council of Maubere Resistance)
CNRT	Conselho Nacional da Resistência Timorese (National Council of East Timorese Resistance)
CNRT (political party)	Conselho Nacional de Reconstrução de Timor (National Congress for Timorese Reconstruction)
CNT	Convergência Nacional Timorese (the National Pact for East Timor)
CPD-RDTL	Conselho Popular pela Defesa da República Democrática de Timor-Leste (Popular Council for the Defense of the Democratic Republic of Timor-Leste)
CRRN	Concelho Revolucionário de Resistência Nacional (Revolutionary Council of National Resistance)
DEF	Delegação Externa da FRETILIN
DFSE	Delegação da FRETILIN em Serviço no Exterior (FRETILIN's Delegation for External Services)
F-FDTL	FALINTIL-Forças de Defesa de Timor-Leste (Timorese Defence Force)

FALINTIL	Forças Armadas de Timor-Leste (Timor-Leste Liberation Army)
FPDK	Forum Persatuan, Demokrasi dan Keadilan (Forum for unity, democracy and justice)
FRETILIN	Frente Revolucionária de Timor-Leste Independente (The Revolutionary Front for an Independent Timor-Leste)
INTERFET	The International Force for East Timor
IUA	Sunrise International Unitisation Agreement
JSMP	Judicial System Monitoring Programme
KORKA	Kmanek Oan Rai Klaran (Wise Children of the Land)
KOTA	Klibur Oan Timor Ass'wain (Association of Timorese Heroes or Sons of the Mountain Warriors)
Lusa	Agência de Notícias de Portugal (Portuguese News Agency)
MFA	Movimento das Forças Armadas (Movement of the Armed Forces)
MTCI	Ministry of Tourism, Commerce and Industry
NC	National Council
NGO	Non-governmental organisation
PARENTIL	Partido Republika National Timor Leste (National Republic Party of Timor-Leste)
PD	Partido Democrático (Democratic Party)
PDC	Partido Democrata Cristão (Christian Democratic Party)
PDHJ	Provedoria dos Direitos Humanos e Justiça (Provedor for Human Rights and Justice)
PDM	Partai Demokratik Maubere (Maubere Democratic Party)
PDRT	Democratika Republica de Timor (Democratic Millenium Party)
PG	Procuradoria-Geral (Attorney General)
PHST	Persuadaraan Setia Hati Terate (Sacred Heart)
PL	Partai Liberal (Liberal Party)
PMD	Partido Milénio Democrático (Democratic Millenium Party)
PMLF	Partido Marxista-Leninista FRETILIN (FRETILIN Marxist-Leninist Party)
PNT	Partido Nacionalista Timorense (Timorese Nationalist Party)
PNTL	Polícia Nacional de Timor-Leste (National Police of Timor-Leste)
POLRI	Indonesian National Police
PPT	Partido do Povo de Timor (People's Party of Timor)
PR	Partidu Republikanu (Republican Party)
PSD	Partido Social-Democrata (Democratic Social

	Party)
PST	Partido Socialista de Timor (Socialist Party of Timor)
PSTT	Pemerintahan Sementara Timor Timur (Timor-Leste Provisional Government)
PUN	Partidu Unidade Nacional (National Unity Party)
SCU	Serious Crimes Unit
TA	Transitional Administrator
UDC	União Democrata-Cristã de Timor (Christian Democratic Union of Timor)
UDT	União Democrática Timorense (Timorese Democratic Union)
UN	União Nacional (National Union)
UNDERTIM	Unidade Nacional Democrática da Resistência (National Democratic Unity for the Resistance)
UNGA	United Nations General Assembly
UNMIT	United Nations Integrated Mission in East Timor
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
UNTAET	United Nations Transitional Administration

INTRODUCTION

One leading scholar wrote that semi-presidentialism ‘apparently is a regime type whose time has come’ (Shugart, 2005: 344). There are now 51 countries with a semi-presidential constitution.¹ Yet, in the academic world the system is highly criticized, even if it has some supporters. Most scholars argue that semi-presidentialism provokes a damaging power struggle that threatens the stability of young democracies, whereas some others maintain that the system can allow power-sharing between competing forces, increasing the prospects of democratic consolidation. This thesis tests whether or not semi-presidentialism is associated with the level and type of conflict that is said to hinder or help democratic consolidation respectively. It does so in the context of Timor-Leste², a new semi-presidential democracy in a post-conflict setting.

Arguments that associate semi-presidentialism with democratic performance are premised on a two-step logic; first, that semi-presidentialism encourages a certain level of institutional conflict and second, that the presence of such conflict explains variance in democratic performance. This thesis examines only the first step of this argument. The literature identifies four types of situations - divided minority government, cohabitation, divided government and unified majority government. Each of

¹ Elgie, R. 2013. Egypt – Constitution suspended. *The Semi-Presidential One* [Online]. Available from:

http://www.semipresidentialism.com/?p=3034&utm_source=rss&utm_medium=rss&utm_campaign=egypt-constitution-suspended [Accessed 4 July 2013].

² Formerly known as East Timor.

these situations is associated with a particular level of conflict. Scholars expect more conflict under divided minority government than under the other three periods and more conflict under cohabitation than under a divided government. Unified majority government is believed to be the least conflictual institutional configuration, though some fear that it will lead to an accumulation of presidential power that can be damaging for democracy. From May 2002 to May 2012 Timor-Leste's semi-presidential system generated three different political situations: cohabitation, divided government and unified majority government. Using Timor-Leste as a case, this project tests whether the political situations generated the level of conflict that theory predicts.

This thesis adopts a variable-oriented approach. It examines the relationship between semi-presidentialism and political behaviour, namely institutional conflict. The observable implications of institutional conflict include the use of formal powers such as vetoes, but also informal powers like presidential statements. An increase in the use of powers correlates positively with conflict and the absence of the use of these powers points to the absence of conflict. In three in-depth case studies we test whether empirical evidence supports the expectations about these situations. In these case studies, this thesis utilized data from multiple sources such as presidential speeches, parliamentary reports, UN documents, research reports, journal and newspaper articles and news releases. In addition, several interviews were conducted with key Timorese political figures, journalists and university professors during field research in Timor-Leste.

We found more institutional conflict during the period of cohabitation than under divided government. In the period of unified majority government institutional relations were the least conflictual. This study, therefore, gives qualified support to the general argument about semi-presidentialism and the various levels of conflict that are expected to occur under this type of system. While it is difficult to make generalisations on the basis of only one case, nonetheless we can draw a general conclusion about semi-presidentialism and institutional conflict. In Timor-Leste, democracy survived despite intense institutional conflict. Future research should thus test the second step of the argument, namely the relationship between institutional conflict and the performance of semi-presidential democracies.

CHAPTER 1

Presidentialism, Parliamentarism, Semi-Presidentialism and Democracy

Political institutions are rules and constraints that shape political interaction and as a consequence help to structure political behaviour. Hence the system of government at least partially conditions the extent of conflict between political actors. Ideally, political institutions should regulate conflict, not generate conflict. If institutions can regulate conflict, then, all else being equal, young democracies are likely to be more stable and less likely to collapse. Equally, if institutions fail to encourage political compromise and conflict does occur, nascent democracies, *ceteris paribus*, run a greater risk to collapse. To many scholars, pure parliamentary systems are more successful in promoting democratic stability than pure presidential systems. Yet, less academic consensus exists about the effect that semi-presidential institutions have on political behaviour and, by extension, democratic stability. Whereas some predict that a semi-presidential constitutional framework supports democratic stability, others maintain that such a system provokes a damaging power struggle between the president and the prime minister and, by extension, destabilises young democracies. This case study tests the different arguments in Timor-Leste, a new semi-presidential democracy in a post-conflict setting. By doing so, it aims to provide a better insight into the workings of semi-presidential systems on young democratic regimes.

Democracy and democratisation

The literature on why some young democracies succeed while others fail is vast. Much of this literature singles out explanatory variables that are exogenous to the government system. Academics consider structural factors like the level of economic development (Moore, 1966; Lipset, 1981; Huntington, 1991; Diamond, 1992; Huber et al., 1993; Gasiorowski, 1995; Inglehart, 1997; Przeworski et al., 2000), political culture (Tocqueville, 1945; Almond and Verba, 1963; Muller and Seligson, 1994; Putnam, 2000) the geopolitical position of new states (Linz and Stepan, 1996; Whitehead, 1996; Levitsky and Way, 2005) as crucial to the success or failure of young democracies.

To many scholars the state of economic development crucially determines the fate of young democracies (Moore, 1966; Lipset, 1981; Huber et al., 1993; Przeworski et al., 2000). Lipset (1981) argues that development leads people to embrace values and attitudes that are friendly to democracy's emergence and viability. Only in a wealthy society can a situation exist in which 'the mass of the population could intelligently participate in politics and could develop the self-restraint necessary to avoid succumbing to the appeals of irresponsible demagogues. A society divided between a large impoverished mass and a small favoured elite would result either in oligarchy ... or in tyranny' (Lipset, 1981: 31). The positive relationship between development and democracy was supported by the work of, for instance, Diamond (1992), Gasiorowski, (1995) and Inglehart (1997). Scholars like Huntington (1991) refine the hypothesis by arguing that economic development increases the likelihood that countries make a

transition to democracy. Huntington argues that democratic transitions are most likely in the countries at the middle levels of economic development. In poor and rich countries, he concluded, transitions to democracy are unlikely. Others have emphasized the relationship between the level of economic development and the *sustainability* of democracy. Przeworski et al. (2000) explain that democratic transitions occur randomly, but, once they have occurred, countries with higher levels of GDP per capita remain democratic. Thus to Przeworski et al., there is a relationship between the level of economic development and the durability of democracy.

In the literature on democracy and democratisation scholars have also emphasised that political culture is likely to have a profound impact on the viability of democratic regimes (Almond and Verba, 1963; Muller and Seligson, 1994). According to this line of thinking, the most important reason why a country is able to sustain democracy is that the people believe in it. Larry Diamond explains that 'political competitors must come to regard democracy as 'the only game in town,' the only viable framework for governing the society and advancing their own interests. At the mass level, there must be a broad normative and behavioural consensus – one that cuts across class, ethnic, nationality, and other cleavages – on the legitimacy of the constitutional system, however poor and unsatisfying its performance may be at any point in time' (Diamond, 1999: 65). In this context, a strong and vibrant civil society enhances the legitimacy of the democratic system and therefore strengthens and deepens a democratic political culture. A robust civil society allows individuals to express their interests and demands on

government and to protect themselves from abuses of power by their political leaders (Tocqueville, 1945; Putnam, 2000).

The development of a democratic political culture may be problematic in deeply divided societies. Scholars like Horowitz (1993) and Huntington (1996) found that societal cleavages may aggravate inter-group rivalries and political instability. However, Lijphart (1969) explains that not all fragmented societies are politically unstable; consociational democracies like Lebanon, Switzerland and The Netherlands were able to manage inter-group conflict as the model allowed for peaceful power-sharing between different subcultures. Horowitz (2002) notes that these states are multi-polar states and insisted that bi-polar states, with a majority and minority, are the more seriously conflicted. The key question is thus whether the inclusion of different political forces in the political decision-making process will reduce mutual tensions and strengthen political stability. As we will see later in this chapter, a similar debate exists with respect to the semi-presidential system, a government system that includes different, and sometimes opposing political groups in the political process.

International forces are also considered to determine the fate of young democracies (Linz and Stepan, 1996; Whitehead, 1996; Levitsky and Way, 2005). Linz and Stepan (1996: 76), for example, emphasized the role of diffusion in democratization processes, positing that 'the more tightly coupled a group of countries are, the more a successful transition in any country in the group will tend to transform the range of perceived political alternatives for the rest of the group. Indeed, ... international diffusion effects can change political expectations, crowd behaviour, and relations of power

within the regime almost overnight.’ Foreign policy and ‘zeitgeist’ (i.e. spirit of the times) are, according to Linz and Stepan, other types of international influence that may affect domestic affairs (Linz and Stepan, 1996: 72-76).

This thesis does not aim to examine the impact of factors that are exogenous to the political system. It is not concerned with the question of whether, for example, economic or cultural factors have undermined or reinforced democratic performance. We do not dismiss the claim that these factors affect the performance of democracy, however the focus of this study lies elsewhere. Our concern is with political institutions, or, more precisely, the constitutional design of executive-legislative relations. We do not argue that executive-legislative relations have greater explanatory power than other factors on democratic performance. We wish to test the effects of a certain system of government and, in particular, whether this system has the effect that people believe it has. This approach forms part of the so-called new institutionalism literature, which is premised upon the notion that the viability of democracy depends not only on economic and social conditions but also on the design of political institutions (March and Olsen, 1984). According to this line of thinking, institutional rules and procedures are believed to shape political behaviour; in so doing they set out the parameters for the success or failure of democratic regimes. This thesis examines whether or not there is evidence to support the hypothesized effects of semi-presidential institutional structures on the level of political conflict within the executive and between the executive and the legislature.

Presidential vs parliamentary systems

In the literature there has been a debate as to which institutional framework best promotes democracy. Most scholars conclude that a parliamentary system is a more supportive constitutional framework for consolidating democracy than a presidential system (Linz, 1990; Riggs, 1992; Mainwaring, 1993; Linz, 1994). Presidential democracies, they argue, are more vulnerable to political instability and democratic breakdown than parliamentary democracies. Mainwaring and Shugart (1997) identify five elements to Linz's critique of presidentialism.

First, and foremost, presidential systems generate a 'dual legitimacy' problem (Linz, 1994: 6). Under presidentialism both the president, who controls the executive and is elected by the people (or an electoral college elected by the people for that sole purpose), and an elected legislature (unicameral or bicameral) enjoy democratic legitimacy. When the two democratically elected institutions are controlled by opposing political forces 'who, on the basis of democratic principles, is better legitimated to speak in the name of the people: the president, or the congressional majority that opposes his policies?' (1994: 7). Institutional tensions that in some countries can be peacefully settled through negotiation or legal means may in other, less happy lands, encourage either the president or the prime minister to seek the help of the military to assume all power. In a parliamentary system the 'dual democratic legitimacy problem' is absent, because executive power is generated by the legislature, which is the only democratically legitimated institution (Linz, 1994: 6). If the majority of the parliament favours a change

in policy direction, it can dismiss the government by passing a no-confidence vote.

Second, presidential systems are too 'rigid' to overcome a problematic executive-legislative relationship, or political stalemate (Linz, 1994: 8). Both the president and the legislature are elected for a fixed term, the president's tenure in office is independent of the legislature, and the survival of the legislature is independent of the president. For Linz this institutional feature introduces a 'rigidity' in the presidential system that means it cannot react to changing political situations: when the president cannot be substituted with someone more willing to compromise with the opposition executive-legislative conflicts may reach an intensity that threatens violence and an illegal overthrow of the regime. Parliamentary systems, by contrast, allow for removal of the executive, thereby preventing a political crisis from turning into a regime crisis (Linz, 1994: 9-10).

Third, the office of the president is indivisible, which is considered not to be conducive to coalition-building and, by extension, democratic stability. Presidentialism 'introduces strong element of zero-sum game into democratic politics with rules that tend toward a 'winner-take-all' outcome' (Linz, 1994: 18). The president cannot represent more than one political party. So the president's party 'takes it all', whereas the party of the defeated candidate 'loses all'. Presidential elections tend to make politics a zero-sum game, encouraging centrifugal and polarizing tendencies in the electorate. A parliamentary system, by contrast, encourages political power-sharing (Linz, 1994: 18). A leader who wishes to be the head of the government but whose

party gains less than a majority of the seats in the legislature is likely to be forced to share power with another party.

Fourth, presidentialism is believed to encourage the president to act beyond the mandate that is legally assigned to him or her. The president's sense of being the elected representative of the whole people and thus the propensity to identify the people as a whole with his or her constituency encourages 'a certain neglect of, sometimes disrespect toward, and even hostile relations with the opposition' (Linz, 1994: 25). The fact that the president's survival does not depend on the confidence of the legislature means that inter-branch conflict is always latent.

Fifth, the election of a 'political outsider' complicates effective executive-legislative relations. Linz defines a political outsider as someone who rises to a top position and who is 'not identified with or supported by any political party, sometimes without any governmental or political experience, on the basis of a populist appeal, [and] often based on hostility to parties and 'politicians'' (Linz, 1994: 26). Linz insists that political outsiders are more likely to win the chief executive office in presidential systems, with potentially destabilizing effects. Individuals selected by direct popular vote are less dependent on and less beholden to political parties. Such individuals, concluded Linz, are more likely to govern in a populist, anti-institutionalist fashion.

Scholars explain that presidential democracies face increased risks of termination when combined with other characteristics such as fragmented party systems. Scott Mainwaring (1993) argues that the combination of presidential government and a multiparty system is problematic. Multiparty

presidential democracies often produce minority governments because the president has more difficulty building reliable governing coalitions. Together with Matthew Shugart he tested and confirmed that what matters for the functioning of democratic regimes is not presidentialism per se, but the combination of an independently elected president with a multiparty system (Shugart and Mainwaring, 1997). Valenzuela explains: 'the more fragmented the opposition and the smaller the president's own party, the greater becomes the challenge of cobbling together a majority ruling coalition' (2004: 13).

So, the separation of powers that defines presidentialism encourages presidential institutions to govern against each other. Given presidential systems lack an effective mechanism to resolve executive-legislative gridlocks, political instability may lead to regime instability. 'It is therefore no accident', Linz concluded, 'that in some of these situations the military intervenes as the *poder moderador* [emphasis in the original]' (Linz, 1994: 7). In parliamentary governments, the structure of the executive-legislative relationship is 'hierarchical' (Shugart, 2006: 353) because the executive power is subordinated to the legislature.³ The legislature can dismiss the

³ Shugart explains that the extent of hierarchical or transactional relationships between executive and legislative institutions in parliamentary regimes depend on whether in practice a single-party obtains a parliamentary majority result or not. Majoritarian systems, according to him, preserve the hierarchy in its purest form, whereas multiparty systems tend towards a more transactional form of parliamentarism. See: Shugart, M. S. (2006) 'Comparative Executive-Legislative Relations', in Rhodes, R. a. W., Binder, S. A. and Rockman, B. A. (eds) *The Oxford Handbook of Political Institutions*: Oxford University Press, 344-365.

government, prevent the escalation of institutional conflict and, by extension, democratic instability.

Several empirical quantitative studies have tested Linz's thesis that parliamentary systems are more conducive to democracy than presidential systems. Alfred Stepan and Cindy Skach's (1993) study of 43 consolidated democracies confirm that parliamentary systems provide a more supportive constitutional framework for consolidating democracy than presidential systems. As compared to presidentialism, parliamentary systems have 'a greater propensity for governments to have majorities to implement their programs; a greater ability to rule in a multiparty setting; a lower propensity for executives to rule at the edge of the constitution and a greater facility at removing a chief executive who does so; a lower susceptibility to military coups; and a greater tendency to provide long party-government careers, which add loyalty and experience to political society' (1993: 22). In a similar vein Przeworski et al. (2000) conclude that parliamentary democracies are more likely to remain democratic than their presidential counterparts. Their study of regime changes examined 141 countries in the period between 1950 and 1990. They confirm that presidential systems are less durable than parliamentary ones. Przeworski et al. conclude: 'The difference is not due to the wealth of the countries in which these institutions were observed, nor to their economic performance. Neither it is due to any of the political conditions under which they function. Presidential democracies are simply more brittle under all economic and political conditions' (2000: 136). Likewise, Maeda (2010) finds that presidential systems are inherently more prone to democratic breakdown than parliamentary systems. The separation

of powers, according to this scholar, tempts presidents into seeking unconstitutional measures to achieve their goals, leading to conflicts with other governmental institutions and political instability.

By contrast, José Cheibub (2007) and Timothy Power and Mark Gasiorowski (1997) dismiss Linz's argument that presidentialism is inherently more perilous for the prospects of democratic survival in newly democratising countries than parliamentarism. Cheibub acknowledges that presidential regimes are more likely to collapse than parliamentary regimes. However, presidential democracies are unstable because they tend to exist in countries that have experienced military dictatorships. Democracies that are preceded by military dictatorships, he explained, are more unstable than those that are preceded by civilian dictatorships. Thus the real problem of presidential democracies is not that they are 'institutionally flawed' but rather that they tend to exist in societies where democracies of any type are likely to be unstable (Cheibub, 2007: 3). Equally, Power and Gasiorowski's (1997) tested Linz's hypothesis concerning the superiority of parliamentary institutions as they relate to democratic survival in the third world between 1930 and 1995. Using Gasiorowski's Political Regime Change (PRC) dataset, they conclude that the 'breakdown rates of presidential and parliamentary democracies are nearly identical' (Power and Gasiorowski, 1997: 137). Likewise, their findings contradict Mainwaring and Shugart's hypothesis that presidentialism and multipartism constitute a difficult combination. Yet, Power and Gasiorowski's study examined the effect of institutions in terms of democratic survival or collapse whereas Reich (2002: 1) points out that many third wave democracies are, in fact, 'semi-democracies' in which

competitive party politics coexist with executives who rely extensively on authoritarian practices. In other words, Linz's thesis that parliamentary systems are more conducive to (semi-) democracies than presidential systems could, therefore, still be valid. Sing (2010) rejects Linz's (1994) argument altogether. Using an original dataset containing 85 countries in the world from 1946 to 2002, he found that a presidential regime is not more likely to bring about democratic breakdown than a parliamentary regime. Also, he rejects Cheibub's (2007) claim that a military legacy explains the breakdown of presidential democracies. His research showed that presidential systems collapse because of, first, ineffective legislatures that are unable to keep civil oversight over the military and, second, an unfavourable U.S. foreign policy. Finally, recent research has questioned the validity of concepts like 'presidentialism' and 'parliamentarism' (Cheibub et al., 2010 ; Fortin, 2012). Given the institutional variation within, in particular, presidential systems the explanatory power of the concept is, according to these scholars, open to question.

In sum, there are strong theoretical arguments against presidential government. While the empirical evidence to support these arguments is disputed, there are also plenty of studies that seem to confirm these theoretical arguments in practice. Whatever the validity of the arguments and the status of the empirical evidence, we can at least safely conclude that most scholars support the notion that parliamentary democracies live longer than their presidential counterparts (Lijphart, 2004: 102). This conclusion is based on the underlying assumption that presidential systems are inherently more prone to institutional conflicts than parliamentary systems. But what

about semi-presidentialism? During the third wave of democratisation, many newly independent states opted for a semi-presidential form of government. What are the theoretical arguments for and against this system and what is the empirical evidence to support these arguments?

Semi-presidential systems

Does a semi-presidential framework promote political stability and strengthen a democratic system? Or, perhaps more precisely, does a semi-presidential institutional framework encourage political actors to respect the rule of law and democracy? This is an important theoretical question with high practical relevance. Almost one-third of the countries currently in existence operate under a semi-presidential system and many of them have little or no democratic tradition (Elgie, 2007b: 1). Yet, there is no academic consensus as to whether a semi-presidential system makes or breaks a democratic regime. Most of the young semi-presidential democracies in Central and in Eastern Europe, in Africa, and in Asia have previously experienced nothing but non-democratic rule by the military, dictators or authoritarian leaders. These new and thus often fragile democracies therefore need a supportive institutional framework that provides incentives for efficient co-operation and effective governance. To what extent does semi-presidentialism generate such a framework?

When discussing semi-presidentialism, the first issue that arises is how to define semi-presidentialism and, thus, how to classify the set of semi-presidential countries. Maurice Duverger (1980: 166) defines the system in the following way: '[a] political regime is considered as semi-presidential if

the constitution which established it combines three elements: (1) the president of the republic is elected by universal suffrage; (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and ministers who possess executive and governmental power and can stay in office only if the parliament does not show its opposition to them'. His definition has often been criticised for being vague (Bahro et al., 1998) or imprecise (Pasquino, 2005) and led other scholars to redefine the concept (Sartori, 1994; Elgie, 1999; Elgie, 2004) or to specify semi-presidentialism by subdividing it into premier-presidential and president-parliamentarian systems (Shugart and Carey, 1992).

Essentially, some authors consider Duverger's definition inadequate because it does not set boundaries with respect to presidential powers. Duverger's second characteristic of semi-presidential systems, namely that the president 'possesses quite considerable powers' does not explain the scope of powers a president. Additionally, Samuels and Shugart (2010: 29) point out that the definition is also vague about the 1) the survival of the president, 2) the origin of the prime minister and the cabinet, and 3) the sources of prime ministerial and cabinet survival. Thus to whom is the president accountable? How are the prime and the cabinet selected and removed from office in semi-presidential systems? Moreover, some semi-presidential systems allow the president to select and deselect the prime minister and cabinet. So, the third property of Duverger's concept of semi-presidentialism, namely that 'the prime minister and ministers can *only* stay in office if the parliament does not show its opposition to them' is, therefore, inadequate.

The dubious validity of Duverger's definition complicated the study into the effects of semi-presidentialism because scholars could not agree which countries should be classed as semi-presidential regimes. In order to distinguish semi-presidential regimes from their presidential and parliamentary counterparts Elgie (1999: 13) defined semi-presidentialism as 'the situation where a popularly elected fixed-term president exist alongside a prime minister and a cabinet who are responsible to parliament'. Elgie's definition leaves out 'the power of the president' as a discriminatory property of semi-presidential regimes. His definition has generally been used by scholars on semi-presidentialism (Neto and Strøm, 2006; Cheibub and Chernykh, 2009; Schleiter and Morgan-Jones, 2009) and will be adopted in this work as well.

Theoretical arguments

The outstanding feature of semi-presidentialism is the existence of an executive with two sources of legitimacy: one direct and one indirect. On the one hand, there is a popularly elected president and, on the other hand, there is a prime minister whose mandate is founded upon the confidence of parliament. Most, if not all, of the arguments for and against semi-presidentialism are based upon this particular feature. According to supporters, this organisation of the executive has three advantages.

First, some scholars argue that a dual authority structure encourages horizontal accountability (Blondel, 1984; Novais, 2007; Pasquino, 2007).⁴ Under presidentialism, executive power is concentrated in the hands of the president, whereas in a semi-presidential system this power is shared by the president and the prime minister. The separation of power encourages each of the executive authorities to check the power of the other. Jean Blondel (1984: 87) suggests that in particular countries with a plural society and a weak party system, presidential systems easily slip down into 'Caesarism', whereas parliamentary systems widen social divisions. He points out that 'neither parliamentarism nor constitutional presidentialism can be expected to bring about a solution to the problems of a country in which efforts are made to set up a pluralist system but where the party configuration is weak or insufficiently streamlined' (1984: 88). 'A dual leadership system', he continues, 'may provide a combination of authority and flexibility which can create the necessary conditions for a more stable regime' (1984: 88). A similar conclusion, but one based on a West European context, has been drawn by Gianfranco Pasquino (2007). According to him, power-sharing within the executive offers the possibility to check the power of institutions and office holders 'especially, though not at all exclusively, in times of cohabitation' (2007: 27). In short, the dual authority structure limits executive authority and, by doing so, it improves the quality and durability of new democratic regimes.

⁴ Horizontal accountability is the capacity of state institutions to check abuses by other public agencies and branches of government. See: O'Donnell, G. A. (1998) 'Horizontal Accountability in New Democracies', *Journal of Democracy*, 9, 112-126.

Second, the dual nature of executive authority in semi-presidential regimes may encourage power-sharing in young democracies (Shugart and Carey, 1992; Elgie, 2007a). Elgie explains: 'In a country where there is an intense political conflict between two opposing forces, semi-presidentialism creates the potential for power to be shared. One force can hold the presidency at the same time as the other force holds the premiership. If each force has an institutional stake in the system, then the chances of both supporting the system as a whole are assumed to be greater than if there is a presidential-style winner-take-all system' (2007a: 55). A somewhat similar position is taken by Shugart and Carey who consider that premier-presidentialism – a semi-presidential subtype – encourages negotiation and compromise between political opponents (1992: 120). Thus, according to this line of thinking, semi-presidentialism with its dual executive has the potential to motivate group leaders to resolve inter-group conflict and support the democratic system.

Third, a semi-presidential constitution combines the strength of a presidential system with the flexibility of a parliamentary system (Sartori, 1994; Pasquino, 1997). Indeed, Arend Lijphart argues that semi-presidentialism 'combines the best of both [constitutional] worlds' (1994: 104, fn.7). On the one hand, the direct election of a fixed-term president can provide the system with political stability and legitimacy. On the other hand, semi-presidential systems are flexible and able to adapt to changing political circumstances (Blondel, 1984: 88). Even one of the staunchest opponents of semi-presidential regimes admitted that 'a bipolar system allows the president to change the prime minister and to change policies without

creating a crisis in the system or even within the party that forms the government' (Linz, 1994: 54). Giovanni Sartori (1994) asserts that semi-presidential systems can much better cope with a split majority than presidential regimes. In semi-presidential system, he explained, 'the problem of divided majorities finds a solution by 'head shifting' by reinforcing the authority of whoever obtains the majority (Sartori, 1994: 125).' He argues that the flexible dual authority structure allows changes in the relative power of the president and prime minister as the majority combinations change. A split majority in semi-presidential systems may even release some societal pressure: during mid-term elections people may opt for cohabitation in order to show their displeasure with the government (Samuels and Shugart, 2010: 260). In sum, the dual executive of semi-presidential systems enhances democratic stability not only because it has all the advantages of the existence of a president but also because the system can better respond to changing political preferences and, by doing so, help to release societal pressure.

An important part of scholarship on constitutional design concludes, however, that institutional tensions are inherent in the semi-presidential structure (Linz, 1994; Linz and Stepan, 1996; Skach, 2005a). According to these academics, semi-presidential constitutions produce a number of volatile institutional configurations, or situations, in which tensions between the president, the prime minister and the legislature may evolve into serious conflict and sometimes in a democratic breakdown. In addition, the semi-presidential system is supposed to encourage 'hyper-presidentialism' (Lijphart, 2004) and coups d'état.

Cohabitation is a situation specific to semi-presidentialism and often associated with democratic instability (Linz and Stepan, 1996; Skach, 2005a; Kirschke, 2007). Under cohabitation the cabinet is supported by a parliamentary majority but the president and prime minister are from *opposing* parties and the president's party is not represented in the cabinet. In such circumstances, the semi-presidential system induces a struggle for power between the president and the prime minister and creates a situation in which at best decision-making will be paralysed and at worst will lead to a constitutional crisis. A legislative paralysis is the likely outcome when the president uses his or her power to delay or to block decision-making. A constitutional crisis may occur when a political actor (often the military and/or the president) feels the need to resolve the political stalemate by illegal means. As a consequence, Linz and Stepan explain, the system is delegitimized: 'When supporters of one or the other component of semi-presidentialism feel that the country would be better off if one branch of the democratically legitimated structure of rule would disappear or be closed, the democratic system is endangered and suffers an overall loss of legitimacy, since those questioning one or the other will tend to consider the political system undesirable as long as the side they favour does not prevail' (Linz and Stepan, 1996: 286). In sum, these scholars reveal a causal relationship between cohabitation and democratic breakdown.

A second problematic scenario is designated by Skach as 'divided minority government' (2005a; 2005c). These are governments that, according to her, combine 'the most risk-prone subtype of presidentialism (divided government) with the most risk-prone subtype of parliamentarism

(minority government). It combines, potentially, the worst-case scenario of both these frameworks – the gridlock of presidentialism with the cabinet instability of parliamentarism – into one’ (Skach, 2005c: 124). In a divided minority government neither the president nor the prime minister, nor any party or coalition, enjoys a majority in the legislature. ‘The absence of any clear majority in a semi-presidential system’, she argues, ‘can predictably lead to an unstable scenario, characterized by shifting legislative coalitions and government reshuffles, on the one hand, and continuous presidential intervention and the use of reserved powers, on the other’ (2005a: 17-18). Furthermore, instability may grow: ‘The greater the legislative immobilism, governmental instability, and cabinet reshuffling resulting from the minority position of the government, the more justified or pressured the president may feel to use his powers beyond their constitutional limit, for a prolonged period of time’ (2005a: 18).

Divided government is another situation that is likely to provoke institutional confrontations. Shugart defines a divided government as a situation in which a legislative majority is held by a party or pre-election coalition which is different from that of the president (as cited in Elgie, 2001: 4). This form of ‘cohabitation between the government and the legislature’ may paralyse the legislative process (Paloheimo, 2001). Friction between the government and the legislature may lead to a low number of government bills presented to the parliament.

The inverse of cohabitation, namely the situation where the president’s party is represented in the cabinet perhaps as the sole party, is also considered by some to be dangerous. For some, this scenario provides

room for the president to accumulate executive and legislative power, leading to hyper-presidentialism (Lijphart, 2004; Pasquino, 2007). When the president is the *de facto* party leader, the importance of the government's accountability to the parliament vanishes because the prime minister is the president's subordinate (Duverger, 1980; Samuels and Shugart, 2010). In other words, the ambition of the president is not countered by the ambition of the prime minister, leading the former to encroach upon the power of the government and parliament. The concentration of power in the hands of one popularly elected office holder may result in 'political and institutional degeneration' (Pasquino, 2007: 25).

Another argument is that semi-presidential systems are inherently susceptible to institutional conflicts in the area of defence. This argument is again formulated by Linz (1994: 57-59) who examined the impact of a dual executive on the command and control of the armed forces. According to Linz, a dual executive system complicates the relationship between the executive and the military. Under semi-presidentialism, there may be three or even four actors in this domain: the president, the prime minister, the minister of defence, and generally a joint chief of staff who has the immediate command of the forces. This complexity provides room for the military to manoeuvre by playing the democratically elected authorities off against each other in order to promote its own interests. Thus, to Linz, the involvement of many actors in command and control of the armed forces complicates the relationship between the executive and the military and leaves room for 'constitutional ambiguities regarding one of the central issues of many

democracies: the subordination of the military to the democratically elected authorities and hopefully civilian supremacy' (Linz, 1994: 59).

A final argument is of a different nature. Scholars like Elgie (2005) and Shugart (Shugart and Carey, 1992; Shugart, 2005; Samuels and Shugart, 2010) do not condemn semi-presidentialism as a whole but single out specific semi-presidential forms that they consider perilous to the institutional stability of new democracies. Elgie (2005) distinguishes three semi-presidential formats: 1) highly presidentialised semi-presidential regimes, 2) semi-presidential regimes with ceremonial presidents, and 3) semi-presidential regimes with a balance of presidential and prime-ministerial powers. He concludes that the experience of highly presidentialised semi-presidential countries has tended to be negative, while the experience of parliamentary-like semi-presidential regimes with ceremonial presidents and strong prime ministers has tended to be positive. The democratic performance of balanced semi-presidential systems is unclear: 'whereas some regimes have managed to navigate potentially problematic democratization processes, others have ended up with failure' (2005: 110).

Shugart and Carey (1992: 55) introduce a further subdivision of semi-presidentialism into premier-presidential and president-parliamentary systems. The principal difference between both subtypes of semi-presidentialism is that in president-parliamentary systems the head of state is empowered to dismiss the prime minister and his or her cabinet. To Shugart and Carey this particular trait leads to unstable cabinets and regimes, in particular when the president and assembly are of opposing

tendencies (1992: 125). The root of the problem, according to them, is related to the fact that presidential-parliamentary institutions provide no incentive for negotiation between the two democratically elected players over the composition of the cabinet. Simply put, why should the president nominate a prime minister that is more acceptable to the assembly than to his or her own liking? Whilst the assembly can fire a prime minister, she cannot appoint him or her. As a consequence, the assembly's only means of affecting the constitution of the cabinet is just to dismiss it. The asymmetrical power balance creates an 'appointment and dismissal game': the president appoints his favourite candidate for the post of prime minister who then is dismissed by an unhappy assembly (Shugart and Carey, 1992: 121). They conclude that when the president and the assembly are at odds, the arrangement is disadvantageous for the cabinet and regime stability. Premier-presidentialism, they hold, does not incite a similar cat-and-mouse game but encourages negotiation and compromise between the president and the assembly over the appointment of cabinet members at the outset of the appointment game (Shugart and Carey, 1992: 120). Under this democratic formula only the assembly may dismiss the cabinet. Whereas the president is empowered to nominate the prime minister, the final cabinet is dependent exclusively on the assembly for survival. In order to avoid cabinet instability or empty cabinet positions (when the assembly does not approve the presidential nominees) both actors need to come to a compromise. So premier-presidentialism stimulates inclusive government where a president chooses a prime minister who is both acceptable to him or herself and to the legislature. In sum, a situation of cohabitation in premier-presidential

regimes may generate a problematic relationship within the executive, whereas in president-parliamentary systems cohabitation may generate conflict between the president and the assembly.⁵ Both situations are potentially destabilizing but according to Shugart and Carey, the risk of a regime crisis is especially great in president-parliamentary regimes (1992: 57).⁶

A final word needs to be said about the theoretical arguments in favour and against semi-presidential systems. Scholars that take up a positive stance on semi-presidential systems generally assess its effect on 'democratic quality' whereas critics measure the system's impact on 'democratic survival'. These dependent variables are empirically different: whereas the critics tend to examine whether or not a democratic regimes breaks down, supporters usually analyse to what extent the system enhances or undermines democratic development.

Empirical evidence

Does the empirical evidence support the hypothesis that semi-presidentialism has a positive impact on new democratic regimes? Firstly, does dual leadership indeed encourage horizontal accountability and peaceful power-sharing? On the one hand, case-study research confirms that

⁵ Therefore, intra-executive problems in premier-presidential system are expected to occur after the inauguration of a new cabinet whereas executive-legislative conflicts in president-parliamentary regimes may take place before, during and after the installation of a new government.

⁶ Shugart and Carey thus assume that intra-executive conflicts are less damaging to cabinet stability than institutional conflict between the executive and the assembly.

in countries like Slovakia, Croatia and Lithuania the semi-presidential system constrained the executive power (Kasapovic, 2008; Malova and Rybar, 2008). In Slovakia, the president effectively balanced the power of the ruling Merčiar government, whereas in Lithuania the semi-presidential system 'meant that too much power was not concentrated in the hands of one institution; it prevented the implementation of extreme policies' (Krupavičius, 2008). On the other hand, the semi-presidential regimes of Guinea-Bissau (Azevedo and Nijzink, 2007), Mozambique (Manning, 2007), Taiwan (Wu, 2007), and some Eurasian countries (Huskey, 2007; Arkadyev, 2008; Birch, 2008; Schleiter and Morgan-Jones, 2008) do not encourage horizontal accountability for the simple reason that the president chooses him/herself with whom to 'share' power. Pasquino's claim (2007) that power-sharing within the executive offers the possibility to check the power of institutions and office holders especially in times of cohabitation does not hold when the president can select and sack a prime minister at will. To be sure, cohabitation does not restrain executive power when the constitution provides the president with legal means to prevent this situation.

The case of Guinea-Bissau also enfeebles the hypothesis that the flexibility of the system encourages democratic stability. As Azevedo and Nijzink (2007: 156) explain: 'In theory, a semi-presidential design is said to keep the president more or less removed from daily politics, thus providing a degree of institutional flexibility. To the extent that this can be regarded as an advantage of semi-presidentialism, Guinea-Bissau does not experience this beneficial effect.' Taking Moldova as a case-study, Steven Roper (2008b) argues that the flexibility found between the executives is a source of vice

instead of strength. According to him, 'the Moldova case demonstrates that this flexibility may actually lead to the entire political system being undermined and the end of semi-presidentialism' (2008b: 118).

To what extent do arguments against semi-presidential systems hold in a real-world context? Are semi-presidential systems indeed more prone to instability and democratic breakdown in new and fragile democracies? To what extent does a situation of cohabitation encourage intra-executive conflict and democratic breakdown? Case-study research reveals that only in Niger did a situation of cohabitation contribute directly to the fall of democracy. Niger exemplifies, to Sophia Moestrup, 'a classical case of gridlock within the dual executive resulting in the breakdown of democracy' (Moestrup, 2007: 105). The president and the legislature's jostling for control of government ended up in a presidential defeat when the former was forced to appoint a political opponent to head the government. The following period of cohabitation paralysed political-decision-making and encouraged the military to restore executive authority. Moestrup confirms the causal relationship between cohabitation and democratic breakdown: 'The standoff between the president and the prime minister seriously discredited the democratic government and opened an opportunity for an authoritarian reversal. The political tensions resulting from cohabitation finally provided an excuse for the military to intervene on the political scene: the military took power in a coup on 27 January 1996, justifying its action with the supposed threat of a civil war' (Moestrup, 2007: 114). In other countries, like Mongolia, cohabitation is said to have contributed to political instability but did not cause a democratic breakdown (Moestrup and Ganzorig, 2007),

whereas in Macedonia cohabitation even encouraged efficient governance (Frison-Roche, 2008: 113). In his cross-national study on the impact of semi-presidentialism on democratic survival, Elgie (2008) confirms that cohabitation seldom leads to the fall of a democratic regime. Linda Kirschke (2007) draws, by contrast, a very different conclusion. She posits that executive power-sharing or cohabitation under semi-presidential systems leads to a high risk of authoritarian reversal in countries in Sub-Saharan Africa. According to Kirschke's regional study, between 1990 and October 2005 a total of twelve of the twenty-three countries (52%) with semi-presidential systems experienced a politically divided executive. Ten of these twelve cases (83%) suffered one or more coups. These research results, she maintained, 'raise serious doubts regarding the compatibility of semipresidentialism with this region' (2007: 1390). However, Kirschke does not classify relatively stable democracies, like Mozambique, as a semi-presidential and used 'cohabitation' as an umbrella term for different forms of political configurations. Military coups in Guinea-Bissau were, according to Kirschke, provoked by a situation of cohabitation despite the fact that the President and the Prime Minister were members of the same political party (2007: fn. 11).

Empirical evidence supports Skach's hypothesis that presupposes a relationship between a divided minority government and political instability. In Kyrgyzstan divided minority government compromised government performance and impeded democratic development (Huskey, 2007) and in Lithuania it generated conflicts between presidents and parliaments (Krupavičius, 2008). Divided minority government in Russia impaired

governmental effectiveness (Schleiter and Morgan-Jones, 2008), whereas in Taiwan it led to a deterioration in effectiveness the country's semi-presidential system (Wu, 2007). Russia is perhaps the clearest example of how a divided minority government may prevent a democracy from consolidating. According to Colton and Skach (2005), given Russia's fluid, poorly institutionalized party system, neither the head of state nor the prime minister could count on a solid party majority in the legislature. As a result, they explain, Russia found itself with a divided minority government from day one. 'It was a highly unstable structure, because neither executive had a legislative majority, but both had substantial access to decree-making authority for bypassing the other branches of government. In short, 'the stage was set for collision' (Colton and Skach, 2005: 118). The destabilizing effect of a divided minority government has also been tested and confirmed by Elgie's (2008) cross-national study.

Case-study research also confirms another peril of semi-presidentialism, namely its tendency towards hyper-presidentialism. In Guinea-Bissau, Kyrgyzstan, Madagascar and Russia presidents have tended to personalise power.⁷ In Guinea-Bissau the return of Vieira (the former president of Guinea-Bissau) on the political scene without the support of his former party and his subsequent return to power 'are clear indications of a growing personalization of the presidency that could be an obstacle to the survival of democracy in Guinea-Bissau' (Azevedo and Nijzink, 2007: 156). In

⁷ The so-called 'highly presidentialized semi-presidential systems' see footnote 4.

Madagascar Charles Cadoux claims that the direct election of the president has 'undoubtedly' contributed to the personalisation of power' (2007: 96). According to him, presidential elections have 'led to a very serious social and political crisis that was deeply disturbing for the people of Madagascar, as the country hovered on the edge of civil war' (2007: 93). He concluded by saying that the Malagasy semi-presidential model sometimes encourages certain authoritarian excesses. In 2009, President Ravolamanana was removed from office for the very reason that the opposition no longer accepted what they claimed to be his dictatorial leadership. Also in Kyrgyzstan presidential elections led to a slide towards authoritarianism. Huskey points out: 'Fresh off this victory, he [President Akaev] placed a referendum before the nation in February 1996 that included wholesale revisions to the Constitution, revisions that granted expansive powers to the presidency at the expense of parliament and prime minister. Eurasian semi-presidentialism had come of age. Throughout his rule, Akaev used popular referendums to revise the constitution in ways that shored up presidential authority' (2007: 166). In Russia, Timothy Colton and Skach (2005) insist that the president's extensive legislative decree powers allow him to dominate the political process. They hold that Russia's constitution potentially inspires governmental instability, parliamentary dissolutions and presidential dominance. The danger, as they see it, is that '(a) president who relies extensively on decrees and ignores the democratically elected legislature may move the country toward constitutional dictatorship' (2005: 117).

Moreover, empirical evidence neither supports nor rejects the hypothesis that suggests a causal relationship between the occurrence of

military coups and semi-presidential systems. Comparative research on military coups has not included the constitutional framework as a likely motive for the military to mix into politics. That said, a regional study on military coups in West-Africa reveals that Cape-Verde, a semi-presidential democracy, has been the only country that did *not* experience a military coup between 1955 and 2004 (McGowan, 2005). In their case-study on the impact of semi-presidentialism on democratic development in Guinea-Bissau Azevedo and Nijzink conclude that the military play an important role in the functioning of the semi-presidential system 'especially because the highly presidentialised design seems to do little to keep non-democratic tendencies in check' (2007: 156). They do not explain, however, if and to what extent military coups are a result the supposed complex civil-military relationship of semi-presidential systems.

The argument brought forward by Elgie (2005) and Shugart and Carey (Shugart and Carey, 1992; Shugart, 2005) that semi-presidential systems do not form a coherent group and that under the rubric of semi-presidentialism there is much variation both institutionally and behaviourally seems to hold out in practice. Cohabitation does not, for example, cause instability in president-parliamentary regimes for in this system the president can select and sack the prime minister at will. In Russia or in Guinea-Bissau presidents have simply fired their prime ministers when the latter disagreed with the former's policy. So conflict between president and prime minister will not be expected when their relationship is hierarchical; only when both actors are forced to work (or transact) together can political infighting be expected. Thus, whereas cohabitation may provoke conflict between the president and

the prime minister under a premier-presidential system, inter-institutional conflicts between the president and the legislature may disrupt a president-parliamentary democracy. In practice, the president-parliamentary regimes of Africa and Eurasia have proven to be much more unstable than their premier-presidential counterparts predominantly located in Eastern Europe. Elgie's study (2011a) compares the relative effects of the two main subtypes of semi-presidentialism and confirmed that countries with president-parliamentary constitutions have performed worse than those with premier-presidential constitutions. He finds that 'presidents and legislatures in president-parliamentary systems have tried to govern against each other, whereas under premier-presidentialism there has been a greater degree of cooperation' (2011a: 176). So, premier-parliamentary systems are less susceptible to institutional conflict than president-parliamentary systems. Premier-presidential democracies, therefore, live longer than their president-parliamentary counterparts.

In sum, scholars on semi-presidentialism are divided as to whether or not the system supports the performance of democracy. Some scholars are convinced that semi-presidential systems can provide the conditions for power-sharing that can improve the democratic performance of young democracies, whereas many others claim that the system encourages tension within and between government institutions and that this leads to problems with democratic performance. Likewise, empirical evidence in support or against these arguments is contradictory and often contested.

Conclusion

The global spread of the democratic political system has led to a voluminous literature that attempts to explain why some democracies survive while others collapse. Within this body of literature there is a debate as to which variable has the greatest explanatory power. One of the proposed mechanisms is the institutional design. An important strand of the literature on political institutions focuses on the executive-legislative relations, more specifically, on the relative merits of presidentialism or parliamentarism. Most scholars conclude that parliamentarism is a more supportive constitutional framework for consolidating democracy than presidentialism. So far, the semi-presidential system has been largely excluded from this debate. Initially, semi-presidential studies focused on the definition of the concept in an attempt to theoretically emancipate the system from parliamentarism and presidentialism. Although by now there is an academic consensus on the definition of semi-presidentialism, scholars are still divided on the issue as to whether the system strengthens or weakens democratic performance. Some authors believe that semi-presidentialism provokes a damaging power struggle that threatens the stability of young democracies, whereas others are convinced that it can allow power sharing between competing forces, increasing the prospects of democratic consolidation. In addition, empirical evidence in support or against these arguments is contested. This thesis examines the political effects of a semi-presidential system in a country specific context. Using Timor-Leste as a case, it will test the hypotheses against and in favour of semi-presidential systems. In the next chapter we will explain how we will test the rival hypotheses.

CHAPTER 2

Research Design

The previous chapter demonstrated that scholars of semi-presidentialism are divided on the question as to whether the system strengthens or weakens the performance of democracy. For the most part, the discussion focuses on the relative advantages and disadvantages of a dual executive.⁸ Some scholars are convinced that the division of executive power between the president and the prime minister constrains executive power (Blondel, 1984; Sartori, 1994; Pasquino, 2007), others think that a dual executive power may maintain or provoke serious conflict between the president and the prime minister (Skach, 2005b; Kirschke, 2007) and between the president, prime minister and defence minister (Linz, 1994). Others claim that under certain political circumstances semi-presidentialism allows presidents to accumulate hyper-powers (Lijphart, 2004). Moreover, there is conflicting empirical evidence in support or against these arguments.

The aim of this work is to test these rival explanations. Do we find evidence in support of arguments that predict institutional conflict that is likely to lead to democratic collapse or do our findings indicate that semi-

⁸ The term 'dual executive' may be misleading since semi-presidential constitutions often vest presidents and cabinets with legislative power. In order to avoid conceptual ambiguity we use president, prime minister and cabinet. Similarly, we use the term 'parliament' instead of 'legislature' since legislation is only one function of a parliament. The term 'government' includes both ministers and secretaries of state.

presidentialism does not encourage political conflict and, hence, that is likely to strengthen democratic performance?

This chapter identifies how the rival interpretations will be tested. It opens by identifying the research question. The 'case selection' section justifies the choice of a single country, Timor-Leste, to examine the effects of semi-presidentialism. Thereafter the dependent and independent variables are presented. The relationship between the president, prime minister and parliament is the dependent variable and may vary from cooperative to conflictual. The different institutional relationships within the executive and between the executive and the legislature are the independent variables. The subsequent section 'observing conflict and cooperation' presents a list of indicators and the 'sources' section discusses primary and secondary sources that have been used to observe the nature of the relationship between the president, prime minister and the parliamentary majority in Timor-Leste. The chapter closes with an outline of structure of the thesis and a conclusion.

Research question

In the literature review, we singled out two general but opposing views of the effects that a semi-presidential type of government is supposed to have on the democratic performance of nascent democracies. The central point of disagreement is whether power-sharing between the president, on the one hand, and the prime minister on the other, discourages conflict that may help the consolidation of young democracies or whether, by contrast, it reflects or deepens political divisions that may paralyse the political process and, by extension, cause a democracy to breakdown.

Scholars assume that different government situations under semi-presidentialism are associated with different outcomes in terms of democratic performance because of the different levels and type of conflict that these situations generate. For example, Linz (1994: 55) argues that the result of cohabitation ‘inevitably is a lot of politicking and intrigues that may delay decision-making and lead to contradictory policies due to the struggle between the president and prime minister’. Skach (2005b) uses the same logic when she wrote about the inherent risks of a divided minority government for the stability of young democracies: ‘the greater the legislative immobilism, government instability and cabinet reshuffling resulting from the minority position of the government, the more justified or pressured the president may feel to use his powers beyond their constitutional limit, for a prolonged period of time. [...] This is why divided minority government, more than the other subtypes of semi-presidentialism, has a greater risk for democratic breakdown’ (2005b: 18). In other words, the literature suggests the following causal sequence:

Figure 2.1: Causal chain between semi-presidential situations and democratic performance

Step 1. Semi-Presidential Situations -> Step 2. Conflict ->
Step 3. Democratic Performance

This project does not examine whether semi-presidentialism affects democratic performance (i.e. steps 1, 2 and 3 in Figure 2.1), nor is it

concerned whether institutional conflict supports or threatens democratic regimes (i.e. steps 2 and 3). Instead, we focus on the first stage of the causal chain (steps 1 and 2). This study aims to evaluate the relationship between semi-presidential situations and institutional conflict. Scholars predict a certain political behaviour under different semi-presidential situations. For instance, scholars assume that political situations where the president and prime minister are political opponents provoke more institutional conflict than situations in which both actors are political allies. If we do not find a relationship between semi-presidential situations and institutional conflict (steps 1 to 2), the general argument that semi-presidentialism leads to democratic collapse (steps 1 to 3) cannot be supported because this argument presupposes that democratic performance is caused by institutional conflict.

It should be noted that scholars draw different conclusions about the strength of the relationship between semi-presidentialism and political behaviour. For instance, in the classic case of Weimar Germany Skach (2005b) found that semi-presidentialism *created* institutional conflict, but in countries like Mongolia the system is said to have *facilitated* political instability (Moestrup and Ganzorig, 2007). In the case of Weimar Germany, the claim about the relationship is very strong. Semi-presidentialism causes conflict. By contrast, in Mongolia the claim is weaker. Here, the semi-presidential system merely provided a forum where existing political preferences were expressed. In other words, in this latter case semi-presidentialism did not necessarily create more conflict or cooperation, but provided an institutional framework within which existing levels of conflict

or cooperation could be expressed. In this thesis we are not concerned as to whether semi-presidentialism causes or reflects conflict for both arguments are consistent with the first stage (steps 1 and 2) of the causal chain.

In sum, this thesis tests arguments that associate semi-presidential situations with a political behaviour, that is, institutional conflict. Some political situations are expected to generate more institutional conflict than others. So, if the change in the government situation does not lead to a change in level of conflict there will be little to support these arguments. If we observe that the change in the government situation corresponds to the hypothesized variation in institutional conflict, then we have found evidence in favour of those arguments. In the latter case, our conclusion would support the critics of semi-presidentialism who hold that the system generates institutional conflict. Such a conclusion might serve as a warning for young democracies given that the arguments are largely derived from empirical studies of nascent semi-presidential democracies. Yet, it needs to be emphasized that this study does not and cannot support the general argument that links institutional conflict to democratic collapse. The key question that informs this project is to understand the effect of semi-presidentialism on cooperation and conflict between the president, government and parliament.

Case selection

We wish to test the empirical effects of different semi-presidential situations on the level of conflict between the president, government and parliament. As noted in chapter 1, scholars have studied the effect of semi-presidentialism in

large-n studies (Cheibub and Chernykh, 2009; Elgie, 2011a; Elgie and McMenamin, 2011), medium-n studies (Elgie, 1999; Protsyk, 2006; Elgie and Moestrup, 2007; Elgie and Moestrup, 2008; Lobo and Neto, 2009; Sedelius and Ekman, 2010) and small-n studies (Shoesmith, 2003; Skach, 2005b; Roper, 2008a; Passarelli, 2010). This thesis will focus on the effect of semi-presidentialism in one country, Timor-Leste. There are reasons why a single-case study is an appropriate research strategy and there are various reasons why Timor-Leste is an appropriate single case to address our research question.

The first reason why a single-case study is an appropriate research design is that it controls for the influence of many other contextual variables that scholars generally hold responsible for democratic change. Chapter 1 identified factors such as economic development, socio-political divisions and international influences that are likely to have a profound impact on democratic performance. We accept that these non-institutional factors are likely to affect democratic performance. Therefore, we have chosen a single case study so as to control for the influence of these factors and concentrate on the effect of semi-presidentialism on the level of institutional conflict, the focus of this study.

In addition, the utility of a single country case study relates to the state of current research in a particular field (Gerring, 2007). In a field dominated by case studies there may be little need for another one, whereas in a field where cross-case analyses are common in-depth studies may be needed to focus on understudied cases. To date, multiple country studies (Duverger, 1980; Kirschke, 2007; Cheibub and Chernykh, 2009; Elgie and

McMenamin, 2011) dominate the research field of semi-presidentialism while within-case analyses have been restricted to book sections (Shugart and Carey, 1992; Elgie, 1999; Elgie and Moestrup, 2007; Elgie and Moestrup, 2008; Lobo and Neto, 2009; Elgie, 2011a; Elgie et al., 2011) or journal articles (Fish, 2001; Shoesmith, 2003; Colton and Skach, 2005). No large single-country study has been devoted to examine the effects of semi-presidentialism on institutional conflict.

The main limitation of single-case study research is that it suffers from problems of representativeness because it includes only one case. Case studies can, however, test theories (King et al., 1994; George and Bennett, 2005). By organizing facts in terms of observable implications of a theory we can evaluate the theory in question. Such a strategy, King et al. insist, 'link theory and empirical work and can help overcome the dilemmas of small-*n* research' (1994: 227). To be sure, our study is not a chronological narrative but focused theory-testing as it intends to evaluate different hypotheses. By engaging in theory-testing we increase the opportunity to generalize the findings of this study for the literature on semi-presidentialism and democratic performance.

We chose Timor-Leste to study the effect of semi-presidentialism on institutional conflict. There are plenty of other young semi-presidential democracies that could have been chosen and, as noted previously, scholars have studied different countries. Yet, we argue that Timor-Leste is an appropriate choice to answer the central research question of this project. The reason for selecting Timor-Leste is, first, that in the literature no confusion exists about the nature of the country's system of government. The

previous chapter has demonstrated that scholars are divided about the classification of some countries as examples of semi-presidential regimes. For instance, the political system of Tunisia or Djibouti is not always considered semi-presidential (Elgie, 2007b; Kirschke, 2007) nor does scholarly consensus exist about the nature of, for example, the system of Sri Lanka, Ireland, Iceland or Austria (Sartori, 1994). The political regime of Timor-Leste has not been subject of academic controversy and has been consistently classified as semi-presidential (Smith, 2004b; Feijó, 2006; Leach, 2006; Simonsen, 2006; Elgie, 2007b; Shoesmith, 2007; Vasconcelos and Cunha, 2008; Reilly, 2011).⁹

Yet, the principal argument for selecting Timor-Leste to study the effects of semi-presidentialism is based on the fact that the country experienced different semi-presidential situations in a relatively short period of time. As we shall see, over a ten-year period Timor-Leste's semi-presidential system generated three different political situations: cohabitation, divided government and unified majority government. In the literature, each of these situations is associated with a political outcome in terms of conflict. So, using Timor-Leste as a case allows us to test these hypotheses about different semi-presidential political situations and institutional conflict. Simply put, if we find that a change in the political situation does not lead to variation in the level of institutional conflict, then we can conclude that semi-presidentialism does not have the hypothesized

⁹ Damien Kingsbury considers the functioning of Timor-Leste's system parliamentary. See: Kingsbury, D. (2007) 'Timor-Leste: The Harsh Reality after Independence', *Southeast Asian Affairs*, 363 - 377.

effects identified from the literature review. In this case, the claim that semi-presidentialism was good or bad for democracy would fall at the first hurdle (step 2 in Figure 2.1). However, if we find that the change in the government situation corresponds to the hypothesized variation in institutional conflict, then we have found corroborating evidence that semi-presidentialism might have an effect on democratic performance. However, this claim would have to be tested separately.

Even though a case study of Timor-Leste is an appropriate choice to test the research question, the limitations of the study should be noted. This project does not 'contribute' to the literature on the relative merits of premier-presidential versus president-parliamentary subtypes of semi-presidentialism. Given our focus on a premier-presidential system, we can only confirm whether the arguments against or in favour of semi-presidentialism hold out in this particular semi-presidential subtype. Likewise, as we shall see, this work does not test the effects of the most conflict-prone semi-presidential situation, namely divided minority government. Yet, this political configuration is perhaps less relevant from a theoretical point of view for several scholars have indicated that semi-presidential systems rarely produce divided minority governments (Samuels and Shugart, 2010). Despite these caveats, this study can provide us with a greater understanding about the effects of different semi-presidential situations on institutional conflict. Future research may use this insight to support or oppose the more general arguments that associate semi-presidentialism with democratic performance.

Dependent variable: level of conflict

The dependent variable in this study is institutional conflict and, by extension, the absence of institutional conflict. Researchers predict that semi-presidential situations provoke different levels of institutional conflict. The literature identifies four different types of situations: divided minority government, cohabitation, divided government and unified majority government. Divided minority government is the most conflict-prone situation. Here the president and prime minister are from opposing parties and the president's party is not represented in the cabinet. As opposed to the other three situations, divided minority governments are not supported (as the term indicates) by a parliamentary majority. Cohabitation refers to a situation where the president and prime minister are from *opposing* parties and the president's party is not represented in the cabinet. Divided government refers to the situation in which a legislative majority is held by a party or pre-election coalition which is different from that of the president. As compared to the other three scenarios, the unified majority government is the least conflictual political situation under semi-presidentialism. Unified majority government is the situation where the president and the prime minister are from the same party or party coalition and where that party or coalition has a majority in the parliament. If we place the four types of political situations along a conflict-intensity continuum we find at one extreme divided minority government where there is intensive conflict and at the other extreme unified majority government where there is little conflict. Table 2.1 provides a quick overview of the intensity and location of potential conflicts between political actors that, according to the literature,

may occur under the different semi-presidential situations. A score of 0 is given to situations where no conflict is expected to take place and a score of 1 point to potentially conflictual relationships.

Table 2.1: Location and intensity of potential conflict under different semi-presidential situations

	President vs PM	President vs Parliament	PM vs Parliament	Total
Divided Minority Government	1	1	1	3
Cohabitation	1	1	0	2
Divided Government	0	1	0	1
Unified Majority Government*	0	0	0	0

If we observe that variation in the situation of government goes hand in hand with a variation in political behaviour, that is, the level of conflict, we will have found evidence in favour of particular arguments. If there is no correlation or if there is a correlation but it is in a different direction to the one expected, then there will be little to support the work of such scholars. From these findings, we will be able to generalise from the Timor-Leste case.

Independent variables: political situations under semi-presidential systems

The choice of a single case study over a short period of time allows many economic, social and historical variables to be held constant. Here we focus

on the impact of different semi-presidential situations on institutional conflict. In the literature, semi-presidentialism is associated with four political situations: unified majority government, divided government, cohabitation and divided minority government. The propositions that are associated with three semi-presidential situations will be tested in Timor-Leste. Table 2.2 demonstrates that, between 2002 and 2012, Timor-Leste's semi-presidential system generated four periods of government with three different political situations: cohabitation (period 1 and 3, respectively between May 2002 and June 2006, and between May and August 2007) divided government (period 2, between June 2006 and May 2007) and unified majority government (period 4, between August 2007 and May 2012).

We choose to disregard the third period for the reason that this government lasted only four months and occurred in between the presidential elections of May 2007 and the parliamentary elections of August the same year. Therefore, it was an interim period. Here we will study the effects of cohabitation, divided government and unified majority government.

Table 2.2: Political situations in Timor-Leste's semi-presidential system

Period of Government	Political situations	Party affiliation executives
May 2002 – June 2006	Cohabitation	President Gusmão vs Prime Minister Alkatiri (FRETILIN)
July 2006 – May 2007	Divided Government	President Gusmão vs Prime Minister Ramos-Horta (N/P)
May 2007 – August 2007	Cohabitation	President Ramos-Horta (N/P) vs Prime Minister Estanislau da Silva (FRETILIN)
August 2007 – May 2012	Unified Majority Government	President Ramos-Horta (N/P) vs Prime Minister Gusmão (CNRT)

Situation 1: Cohabitation

In August 2001 elections for a Constituent Assembly (CA) were held. According to UN Regulation 2001/2, the CA would prepare and adopt a constitution within 90 days after its election.¹⁰ FRETILIN won a landslide victory in the CA elections. The CA turned into parliament and, hence, FRETILIN secured a parliamentary majority. FRETILIN's leader, Marí Alkatiri, became Prime Minister in the First Constitutional Government of Timor-

¹⁰ UNTAET. 2001a. On the Election of a Constituent Assembly to Prepare a Constitution for an Independent and Democratic East Timor. Regulation No. 2001/2, 16 March 2001.

Leste and, apart from two non-partisan ministers, his Cabinet was made up exclusively of members of the FRETILIN party. In March 2002 the Constitution was adopted that ushered a semi-presidential form of government. In April 2002 José Alexandre Gusmão, (better known under the *nom de guerre* Kay Rala Xanana) became President after winning the first presidential elections. On May 2002 Timor-Leste was officially declared independent. Gusmão and Alkatiri are divided by political beliefs. The divisions between the two leaders will be outlined in chapter 3.

According to the theoretical predictions summarised in Table 2.1, we expect to find the President to be embroiled in a conflict with both the Prime Minister and the parliamentary majority. So, we foresee a conflictual relationship between President Gusmão and Prime Minister Alkatiri on the one hand, and between President Gusmão and the parliamentary majority, on the other hand.

Situation 2: Divided Government

A new type of situation emerged when José Ramos-Horta was appointed Prime Minister in July 2006. The change of Prime Minister Alkatiri narrowed the ideological cleavage between President and Prime Minister. Although Ramos-Horta had previously served as the Minister of Foreign Affairs under the Cabinet of Prime Minister Alkatiri, several recent events have demonstrated that he was closely allied with President Gusmão: the latter not only wanted him to succeed Prime Minister Alkatiri, he also actively supported Ramos-Horta's candidacy during the presidential campaign of 2007 (Vasconcelos and Cunha, 2008). On 20 May 2007 Ramos-Horta was

sworn in as the President of Timor-Leste. Table 2.1 demonstrated that a divided government generates conflicts between the President and the parliamentary majority. Accordingly, in Timor-Leste we expect a conflictual relationship between President Gusmão and the parliamentary majority controlled by FRETILIN.

Situation 3: Unified Majority Government

From August 2007 to May 2012 a majority coalition government governed Timor-Leste. The Aliança da Maioria Parlamentar (AMP¹¹) coalition included four parties – CNRT, PSD/ASDT, PD, UNDERTIM¹² – and was headed by the former President and now secretary-general of the CNRT, Gusmão. This period is designated as a unified majority government because President Ramos-Horta and Prime Minister Gusmão were political allies and a parliamentary majority supported the AMP government.

Under unified majority government few conflicts are anticipated between the President and the Prime Minister and the President and the parliamentary majority. In Timor-Leste, the President claims to be non-partisan: he is not a member of a political party since the country was declared independent. However, as noted previously, and will be discussed in chapter 3 and chapter 6, the President and Prime Minister are political allies.

¹¹ AMP/Aliança da Maioria Parlamentar (Parliamentary Majority Alliance).

¹² PSD/Partido Social Democrata (Democratic Social Party); ASDT/Associação Social-Democrata Timorense (Social Democratic Association of Timorese); PD/Partido Democrático (Democratic Party); UNDERTIM/Unidade Nacional Democrática da Resistência (National Democratic Unity for the Resistance). UNDERTIM formally joined the AMP Government in 2008.

So, we expect to observe only moderate conflicts between the President and Prime Minister and between the President and the parliamentary majority.

In general terms and in accordance with the theory summarised in Table 2.1, each political situation should correspond to a different level of conflict: in theory, cohabitation is supposed to generate the most amount of conflict, followed by divided government and then unified majority government. If we do not observe that the level of institutional conflict varies with the government situation this study will not support the argument that semi-presidentialism generates or reflects institutional conflict. The next section will identify the indicators that will be used to identify conflict or the absence thereof.

Observing institutional conflict

Figure 2.1 demonstrated that conflict between the president, prime minister and the parliamentary majority is a function of the different political configurations that are generated by semi-presidential systems. Having identified variation in the political situations (cohabitation, divided government, unified majority government) in the expectation that these situations will lead to different types and levels of conflict, in this section we identify indicators of political conflict. We would expect the different political situations in Timor-Leste from 2002-2012 to be associated with different forms of conflict and to different degrees of intensity.

This work tests the institutionalist approach to explain political behaviour. The division of power is regulated by constitutional rules. The set of rules that define the relationship between the executive and the legislature

are of central importance to this work. Thus, on the basis of the Constitution of Timor-Leste, we single out those rules that define the division of power between the President, the Prime Minister and the parliamentary majority. The way political actors use these powers – in conflict or not – serves, then, as evidence for or against the causal arguments that relate different semi-presidential types of political situations to a certain level of conflict. This study assumes that political actors use their powers to try to maximize their preferences. So, an increase in the use of powers correlates positively with conflict and the absence of the use of these powers points to the absence of conflict. When there is no conflict politicians are expected to refrain from using their powers because there is no need to do so.

The Constitution¹³ establishes ‘four organs of sovereignty’ (Section 67): the President, the Government, the National Parliament and the Courts. This work, however, concentrates on the relationship between the president, prime minister and the parliamentary majority. The Constitution states that the Government is accountable to both the President of the Republic and to the National Parliament for conducting and executing the domestic and foreign policy in accordance with the Constitution and the law (Section 107). The triangular relationship between the President, Government and Parliament is governed ‘by the principle of separation and interdependence of powers’ (Section 69). The interdependence (or overlap) of institutional

¹³ Constituição República Democrática de Timor-Leste (RDTL), *Jornal da República*, <http://www.jornal.gov.tl/> (Portuguese/Tetum). An English translation of the Constitution can be found on the website of the Government of Timor-Leste, <http://timor-leste.gov.tl/?cat=37&lang=en>.

jurisdiction deserves extra attention here: policy areas where the implementation of political decisions depends on dual, and sometimes triple consent are vulnerable to conflict. We will see that policy in the areas of defence and foreign affairs are examples in this regard.

The Constitution of Timor-Leste defines the President as the head of State and the symbol and guarantor of national independence and unity of the State and of the smooth functioning of democratic institutions (Section 74:1). To fulfil this mandate the President is endowed with legislative powers, appointment and dismissal powers, and certain prerogatives in the area of defence and foreign affairs. In this context, the Constitution empowers the President to:

1. veto any statute (Section 85c);
2. request the Supreme Court of Justice to undertake preventive appraisal and abstract review of the constitutionality of the rules (Section 85e);
3. submit relevant issues of national interest to a referendum (85f);
4. declare the state of siege or the state of emergency following authorisation of the National Parliament, after consultation with the Council of State, the Government and the Supreme Council of Defence and Security (Section 85g);
5. grant pardons and commute sentences after consultation with the Government (Section 85i);

6. appoint and swear in the Prime Minister designated by the party or alliance of parties with parliamentary majority after consultation with political parties sitting in the National Parliament (Section 85d);
7. address messages to the National Parliament and the country (Section 86e)
8. appoint, swear in and remove Government members from office, following a proposal by the Prime Minister (Section 86h);
9. appoint the President of the Supreme Court of Justice and swear in the President of the High Administrative, Tax and Audit Court (Section 86j);
10. appoint the Prosecutor-General for a term of four years (Section 86k);
11. appoint and dismiss, following proposal by the Government, the General Chief of Staff of the Defence Force, the Deputy General Chief of Staff of the Defence Force, and the Chiefs of Staff of the Defence Force, after consultation with the General Chief of Staff regarding the latter two cases (Section 86m);
12. appoint and dismiss ambassadors, permanent representatives and special envoys, following proposal by the Government (Section 87b);
13. conduct, in consultation with the Government, any negotiation process towards the completion of international agreements in the field of defence and security (Section 87d).
14. dissolve the National Parliament in case of a serious institutional crisis preventing the formation of a government or the approval of the state budget and lasting more than sixty days, after consultation with

political parties sitting in the parliament and with the council of state
(Section 86f);

15. dismiss the Government and remove the Prime Minister from office
after the National Parliament has rejected his or her programme for
two consecutive times (Section 86g);

It will be noted that the powers of the President of Timor-Leste are not proactive powers. They are reactive, corresponding to the notion of an arbiter, as referred to in Section 74 of the Constitution. These powers¹⁴ enable the President to oversee the work of the Government (Section 107). Institutional conflict is likely to occur in areas where the President can hold the Government accountable. When the President and Prime Minister fail to align their political preferences we may expect the President to his powers as an agenda-setting device.

Second, the Constitution allows the National Parliament to curb presidential powers. The parliamentary majority can:

16. override presidential vetoes (Section 88);
17. disapprove the appointment of the President of the Supreme Court of
Justice and of the High Administrative, Tax and Audit Court (Section
95:3a);
18. reject the President's request to make state visits (Section 95:3h);

¹⁴ Shugart and Carey call such presidential powers 'negative powers'. See: SHUGART, M. S. & CAREY, J. M. (1992) *Presidents and Assemblies: Constitutional Design and Electoral Dynamics*, Cambridge University Press, p. 107.

19.reject the President's declaration of the state of siege or the state of emergency (Section 95:3j).

Conflict between the President and parliamentary majority may encourage the latter to limit presidential power. The parliamentary majority may decide to overrule presidential vetoes, refuse to ratify the presidential appointment of the President of the Supreme Court of Justice and of the High Administrative, Tax and Audit Court, refuse permission for presidential state visits.

In 2002, Timor-Leste's semi-presidential system generated a period of cohabitation that lasted until 2006. In times of cohabitation we expect conflict between the President and Prime Minister (indicators 1-15). It also should be noted that the Constitution delineates the conditions under which the National Parliament can be dissolved, namely 'in case of a serious institutional crisis preventing the formation of a government or the approval of the state budget and lasting more than sixty days' (indicator 14). Likewise, the Government and the Prime Minister cannot be dismissed under normal circumstances where the Government enjoys the support of a parliamentary majority (Section 112:2) (indicator 15). The precise definition of the conditions under which the President can use these powers prevents that the President can use this power as an agenda-setting mechanism. Therefore, indicator 14 and 15 will also not be considered as indicators of institutional conflict. To be sure, in the case that the President would dissolve Parliament or dismiss the Government under other conditions than those that are specified in the Constitution, such an act would be an indicator of political

conflict, not of institutional conflict. The parliamentary majority, in turn, may use its power (indicators 16–19) to limit presidential influence in the political process, and hence it will seek to override presidential vetoes, reject presidential appointments, renounce the state of emergency and so on.

The second period, divided government, is a short period of less than a year. Under divided government we expect to observe less intensive institutional conflict than under cohabitation. Although the parliamentary majority is likely to (continue to) obstruct the policy agenda of the President (indicators 16-19) conflict between the President and the Prime Minister is likely to decrease given that Gusmão and Ramos-Horta are political allies. So, under divided government, conflict is less likely in policy areas in which President and Prime Minister share power (indicators 5, 8, 11, 12, 13).

Under unified majority government the relationship between the President and Prime Minister is likely to be less conflictual than under cohabitation and divided government. The President is likely to support the Prime Minister and the Parliament is expected to support the Prime Minister. In sum, the Government enjoys the support of the two offices that, according to the Constitution, are empowered to hold it accountable (Section 107). In the case that the President will encroach on the power of the Government and the parliamentary majority, the latter may whistle back the President (indicators 16-19).

The observable implications of institutional conflict are likely to manifest themselves not exclusively through *formal* procedures but informally too. The President may resort to *informal* ways to influence executive policy. For example, the President may use anti-party rhetoric in

the media to boost his own standing at the Government's expense or resort to populist rhetoric aimed at putting pressure on the Government. The President can also threaten to use the powers of the office. These conflicts occur within constitutional limits but are not regulated through formal procedures. In addition, we might observe conflict when the President, the Prime Minister or the parliamentary majority do not fulfil or refuse to perform their constitutional duties. Examples include situations where the President refuses to nominate a minister at the proposal of the prime minister, or when the prime minister refuses to propose a replacement minister when the initial proposal was refused by the President.

In brief, this section presented a list of observable implications that will be used to identify formal and informal institutional conflict. If we find that there was more conflict under cohabitation than under the other two periods and more conflict under a divided government than under unified majority government, then the expectations of the literature are met. If we do not find that the change in the government situation corresponds to the hypothesized variation in conflict, then we would conclude that the evidence does not support the arguments about semi-presidentialism.

Sources

To identify the relationship between the President, Prime Minister and the parliamentary majority we will make use of both primary and secondary sources. Primary sources include the online government gazette of Timor-Leste, parliamentary reports on the legislative process in Timor-Leste and presidential speeches published online and in books. The presidential

discourses form an important source of information for the President often used public speeches to criticise the Government and its policies. Empirical data from secondary sources are collected from electronic databases of LexisNexis and Lusa, a Portuguese news agency. Also, two websites were consulted, the East Timor news blog 'Riseup' and the Asia Pacific Solidarity Network (APSN). Both sites contain an extensive archive with both national and international news reports, articles and press releases on Timor-Leste. The archive also includes news reports that have been broadcast on radio and national television. We also consulted the website of local NGOs like the Judicial System Monitoring Programme (JSMP) and La'o Hamutuk for background information on legislative matters and the UNMIT website for UN reports, statements and letters of the Secretary General to the Security Council and General Assembly on institutional developments in Timor-Leste. In addition, secondary empirical material was collected during field research in Timor-Leste.

In the LexisNexis database, the terms 'Timor', 'Gusmão' and 'Alkatiri' were introduced to find empirical evidence of institutional conflict between 14 April 2002 and 26 June 2006. On 14 April 2002, Gusmão was elected President and on 26 June 2006 Prime Minister Alkatiri resigned. In addition, the terms 'Gusmão' and 'parliament' were used to find evidence of conflict between the President and the parliamentary majority in the same period. The same procedure was used to identify conflicts in the other two periods. The LexisNexis database returned 6,677 hits which needed to be examined on a case-by-case basis. We also examined the news reports, press

statements, media releases that have been published on the websites of the two news blogs between April 2002 and May 2012, a total number of 40,023.

In addition, we conducted field-work in Timor-Leste. There, we conducted in-depth interviews with key figures in Timor-Leste politics, legal advisors of the President, Prime Minister and Parliament. We talked to former Prime Minister Alkatiri, former Defence Minister Rodrigues, former Foreign Minister da Costa, former President Gusmão's former Chief of Staff, Pereira, former vice-Prime Minister Mário Carrascalão and conducted an e-mail interview with former President Ramos-Horta. This thesis does not derive its main conclusions from in-depth interviews. For one thing, these politicians sometimes gave contradictory accounts of political events. Although we will report their accounts, they do not serve as 'evidence' on which this project stands or falls. In addition, we spoke to the legal advisor of President Taur Matan Ruak, Mr. Rosário Soares and the legal advisor of the National Parliament, Mr. Cruz. We also met with Mr. Oliveira Sampaio and Mr. da Costa Bobo, members of the Judicial Monitoring Programme, a local NGO sponsored by the United Nations. We spoke to former Lusa correspondent, Mr. Rosa Mendes, and questioned Professor Carrascalão, Dean of the Law Faculty at National University Timor-Leste about issues related to the Constitution of Timor-Leste. The material collected during field research in Timor-Leste sometimes corroborated earlier findings and have been reported in this thesis. Again, while these interviews are useful they are not the main source of information.

Structure

The effects of semi-presidentialism on conflict within the executive and between the executive and the legislature in Timor-Leste will be examined in the rest of the thesis. The next chapter elaborates on the political context in which the semi-presidential system was introduced. The aim is to provide the context with which the independent institutional effects of semi-presidentialism can be identified in the post-independence period. In chapters 4, 5 and 6 we examine this period, identifying the impact of the three different semi-presidential situations on the relationship between the President, Prime minister and the parliamentary majority. These chapters will analyse respectively the influence of cohabitation, divided government and unified majority government; to what extent have these types of situations generated conflict in ways suggested by the theories presented in chapter 1. In chapter 7 we provide an overview of the findings, draw conclusions about the hypothesised effects of semi-presidentialism, and identify avenues for future research.

Conclusion

Critics of semi-presidentialism hold that the system provokes institutional conflict which leads to democratic collapse. Proponents of semi-presidentialism argue that it encourages cooperation that may facilitate democratic consolidation. In this thesis we test the first stage of these causal arguments, namely whether or not semi-presidentialism maintains/creates institutional cooperation or conflict. We explained that we test the arguments about semi-presidentialism and institutional conflict in one country in order

to control for the influence of many other contextual variables. We provided reasons for choosing Timor-Leste. This is mainly because semi-presidentialism produced three government situations: cohabitation, divided government and unified majority government. In the literature, cohabitation is supposed to generate the most amount of conflict, followed by divided government and then unified majority government. A list of observable implications of institutional conflict was presented that will be used to assess whether the three political situations entrenched or bridged political differences. We support the general argument that semi-presidentialism, due its dual executive, generates institutional conflict if we observe that the change in the government situation corresponds with a linear decrease of institutional conflicts. However, if we do not observe that a change in the government situation varies with variation in institutional conflict and in the right direction arguments that associate semi-presidentialism with institutional conflict are unsupported. The next chapter describes the political context in which the semi-presidential system was introduced.

CHAPTER 3

Historical Background

In Timor-Leste the view commonly heard is that 'we can't write our own history because everybody disagrees.' (Leach, 2010, 126)

The history of Timor-Leste is largely dominated by foreign rule. The first Portuguese traders set foot on the island around the year 1515. Around 460 years later, the remnants Portuguese administration withdrew from the former colony in 1975. After a brief armed conflict between Timorese factions, Indonesian forces invaded the country on December 1975. During 24 years of repressive occupation, Indonesia never succeeded in winning the hearts and minds of the Timorese. So, in 1999, when the United Nations organised a popular consultation, an overall majority of Timorese voted for independence. A United Nations Transitional Administration (UNTAET) was then called upon to support the people of Timor-Leste building a modern and democratic state. On May 2002, Timor-Leste was officially declared independent.

The aim of this chapter is to provide the context with which the independent institutional effects of semi-presidentialism can be identified in post-independence Timor-Leste. The chapter focuses on the development of *informal* power structures given that the Timorese were largely excluded from *formal* power structures, which were dominated by Indonesia, the occupying power. It concludes that Timor-Leste's political society was divided before it adopted the semi-presidential system. In so doing, it demonstrates that we do not assume Timor-Leste was a *terra nullius* or a

political no-man's-land before the introduction of the semi-presidential system. Thus, when we examine the period 2002-2012 in the next three chapters we will effectively control for the conflict that was present prior to independence. In that context, we will then aim to demonstrate whether the country's semi-presidential institutions reflected existing and potentially destabilising conflict, whether they exacerbated such conflicts, or whether they reduced their intensity.

This chapter is structured as follows. First, we briefly explain the influence of Portuguese colonization on the development of a Timorese political society. We then examine the dynamics of political relations between Timorese political parties under Indonesian occupation. Likewise, we examine how the UN Transitional Administration affected power structures in Timor-Leste. Finally, we draw a conclusion about the relative cohesion of Timor-Leste's political society when Timor-Leste adopted a semi-presidential constitution.

Party formation after Portuguese colonisation

The Portuguese presence in Timor-Leste used local divisions to consolidate power. The Portuguese colonial administration exploited rivalries between the indigenous groups to quell local uprisings (Pélissier, 2006). At the end of the 19th century and beginning of the 20th century, the Portuguese faced a growing number of local uprisings, which were quashed with the support of benevolent traditional leaders (*lurais*) who recognized the Portuguese authority. For example, the ethno-linguistic division between the Firaku and the Kaladi, or, respectively, the native Westerners versus the native

Easterners of Timor-Leste, persisted under Portuguese rule.¹⁵ A number of *liurai* that were loyal to the Portuguese colonial power were recruited into the local administration. The practice of forming alliances with external powers to gain local political advantage was encouraged during Portuguese colonisation and continued in the post-independence period (Kingsbury, 2009).

In 1974, the fall of the authoritarian regime in Portugal opened the way for the Timorese to form political parties. In Lisbon, the ruling MFA (*Movimento das Forças Armadas*¹⁶) issued law 7/1974 by which Timor-Leste was granted self-determination. The tiny group of the educated elite, most of whom had gained some political experience under the Portuguese administration, established the first political parties.¹⁷ Thus far, the colonial administration had prohibited the creation of national political organisations. The one party that had been allowed to exist, the UN (*União Nacional*¹⁸), an extreme rightist party, was supported by the Lisbon government. Yet, the

¹⁵ During Manufahi uprising of 1900-1912, for example, Portuguese co-opted easterners (known as the Firaku) in their battle against the western (Kaladi) 'king' of Same-Manufahi. See: Pélissier, R. (2006) *As Campanhas Coloniais de Portugal (1844-1941)*. Lisbon: Editorial Estampa. The east-west divide, or the Firaku-Kaladi rivalry, was considered to be one of the principal motors behind several security crises in post-independent Timor-Leste. Simonsen, S. G. (2006) 'The Authoritarian Temptation in East Timor: Nation-Building and the Need for Inclusive Governance', *Asian Survey*, 46, 575-596. About the origins of the Kaladi-Firaku division, see: Hicks, D. (2009) "'Ema Lorosa'e", "Ema Loromonu": Identity and Politics in Timor-Leste', in Cabasset-Semedo, C. and Durand, F. D. R. (eds) *East-Timor: how to build a new nation in Southeast Asia in the 21st century?*, Bangkok: Research Institute on Contemporary Southeast Asia (IRASEC), 81-95.

¹⁶ Armed Forces Movement.

¹⁷ The first Timorese were recruited only in 1968 into the Portuguese government. See: Guterres, F. D. C. 2006. *Elites and Prospects of Democracy in East Timor*. PhD thesis, Griffith University.

¹⁸ National Union. In 1970 the name of the party was altered to ANP (*Acção Nacional Popular*), Popular National Action.

newly acquired freedom of association went hand in hand with growing inter-party tensions. The Timorese not only lacked democratic experience, but also the uncertainty about the political future of Timor-Leste meant that political parties were more susceptible to external influence. The interference of foreign powers in local politics sharpened political divisions and hampered inter-party cooperation.

The UDT (*União Democrática Timorense*¹⁹) was the first political party to emerge in Timor-Leste on 11 May 1974. Members of the party included the colony's traditional elite, small businessmen, and plantation owners who owed their status and prosperity to Portuguese rule. Most UDT members had been employed by the Portuguese Administration or were descendants of such appointees.²⁰ The party's political outlook can be characterised as conservative, and, not surprisingly, pro-Portugal. It wanted gradual independence and favoured continuing links with Portugal. UDT's programme called for democratisation, income redistribution, human rights, and, above all, self-determination for the Timorese people oriented towards a federation with Portugal with an intermediate stage for the attainment of independence, and a rejection of the integration of Timor into any potential foreign country (Taylor, 1999). Later, during Indonesian occupation, the UDT changed its political objective from a federation with Portugal to integration

¹⁹ Timorese Democratic Union.

²⁰ Manuel Carrascalão, for example, was one of the founding members of the UDT, and had been elected to become part of a Legislative Council that was created in 1968 by the Portuguese Administration to support the governor in administering the territory. Another prominent member, Francisco Lopes da Cruz, served as a Custom Officer within the Portuguese Administration.

with Indonesia. Owing to their support for the Indonesian military regime, the UDT members were given prominent positions in local government and the Indonesian army (Guterres, 2006). One of the co-founders of the UDT, Mário Carrascalão, was Timor-Leste's appointed governor for ten years during Indonesian occupation.

FRETILIN (*Frente Revolucionário de Timor-Leste Independente*²¹) was originally founded as the ASDT (*Associação Social Democrata Timorese*²²) on 20 May 1974. Its leadership shared some unifying characteristics. They were almost all around 30 years old, all of them had been educated at Catholic schools (several of them had been trained for the priesthood), and a number of the most prominent leaders were sons of *liurai* or *suco*²³ chiefs. However, a number of distinct strands existed in the party. The dominant trend within the ASDT was social democratic and was represented by leaders such as José Ramos-Horta, the Prime Minister of Timor-Leste from 2006-2007 and President from 2007-2012. Another trend was represented by Nicolau Lobato, who combined a fervent anti-colonial nationalism with notions of economic self-reliance and political development based on the Angolan and Mozambican experience. A third group including Vicente Sa'he and Mau Lear (António Carvarinho) attempted to use Marxist politics in a nationalist Timorese context. Prominent members like Marí Alkatiri had close ties with the latter two groups and linked Lobato's perspective with that of Mau Lear (Taylor, 1991). Alkatiri, who would become the first Prime Minister of post-

²¹ Revolutionary Front for an Independent Timor-Leste.

²² Timorese Social Democratic Association.

²³ Elected heads of villages.

independent Timor-Leste serving from 2002-2006, belonged to the leftist nationalist camp.

In September 1974, the ASDT was renamed FRETILIN. However, FRETILIN was a more radical party than its predecessor. According to one of its founding members, the ASDT was formed to defend the idea of independence whereas FRETILIN was formed to fight for independence (Taylor, 1999). Its political programme called for ultimate de jure independence from Portugal, with de facto independence through a rapid process of decolonisation in the areas of administration, and control of the state, institutional racism, cultural transformation, education, and economic organisation. By the end of 1974, FRETILIN was the largest party in Timor-Leste, surpassing the more conservative UDT.²⁴ The party drifted increasingly to the left and associated itself with other Marxist national liberation movements. In 1977, FRETILIN officially adopted Marxism-Leninism. José Alexandre (Xanana) Gusmão, one of the three FRETILIN central committee members who survived the Indonesian military campaigns, was elected president of FRETILIN in 1981. Gusmão would become the symbol of the resistance against Indonesian occupation and the first president of an independent Timor-Leste serving from 2002-2007.

The pro-Indonesian APODETI (*Associação Popular Democrática da Timor*²⁵) was established in May 1974. The party was funded by Indonesia

²⁴ FRETILIN won 55% of the votes during the 1975 elections for local councils. See: Taylor, J. G. (1991) *Indonesia's Forgotten War: The Hidden Story of East Timor*. London: Zed Books.

²⁵ Timorese Popular Democratic Association.

and guided by that nation's military and security apparatus. Its manifesto called for 'an autonomous integration into the Republic of Indonesia in accordance with international law' and the 'teaching of the Indonesian language as a compulsory subject' (CAVR, 2005). The President of APODETI, Arnaldo dos Reis Araújo, collaborated with the Japanese during the Second World War and spent several months in Jakarta where he met government officials to organise support for the party. Another prominent figure in the party, Guilherme Gonçalves, was a descendant of a long line of *liurai* who had rebelled against the Portuguese authority (Kingsbury, 2009). Whilst the UDT and the ASDT membership grew rapidly into the thousands, APODETI never had more than 300 members throughout the whole of 1974 (Taylor, 1999). During the Indonesian occupation many APODETI's affiliates were recruited into local government.²⁶ Some of the founding members of the party, like Abílio Osório Soares, would become involved in the atrocities committed by pro-integration political groups in Timor-Leste in 1999 when the majority of the Timorese voted for independence (CAVR, 2005).

In addition, three other small political parties were founded. There was a monarchist grouping of traditional leaders, KOTA (*Klibur Oan Timor Ass'wain*²⁷), a small Labour Party (*Trabalhista*), and ADITLA (*Associação Democrática para a Integração de Timor-Leste na Austrália*²⁸). KOTA was formed in November 1974 and advocated a return to a traditional form of

²⁶ The President of APODETI, dos Reis Araújo, was appointed head of the Provisional Government of Timor-Leste.

²⁷ Association of Timorese Heroes or Sons of the Mountain Warriors.

²⁸ Democratic Association for the Integration of Timor-Leste into Australia.

political organisation that focused on *liurai*, but only those *liurai* who traced their decent from the Topasses²⁹ (Taylor, 1991). The Labour Party supported independence but favoured a phased process and continuing links with Portugal. ADITLA proposed joining Australia but disappeared once Australia ruled it out in March 1975. Effectively there were two genuine parties vying for popular support, and one created by Indonesia for its own purpose (Taylor, 1999).

Internal armed conflict

The process of political party formation went hand in hand with growing inter-party tensions despite the fact that party members often shared the same background, knew each other well, and sometimes belonged to the same family.³⁰ The prospect of independence seemed to deepen and intensify differences, in particular between the two most important national parties, the UDT and FRETILIN. In January 1975, supported by the Portuguese Governor, Mário Lemos Pires, both parties agreed to collaborate 'on the basis of their joint commitment to full independence, the rejection of APODETI and of integration with Indonesia, and the establishment of a transitional

²⁹ The Topasses, also called the 'black Portuguese', belong to a mixed race group fathered by Portuguese sailors, traders and soldiers whose descendents remain in Timor to this day.

³⁰ Xanana Gusmão wrote in his autobiography about his disappointment with the growing inter-party tensions that even divided his own family. 'This really was not what I wanted. UDT parents, APODETI uncles, FRETILIN children. What a shit this freedom was!' See, Gusmão, X. (2000) *To resist is to win! the autobiography of Xanana Gusmão with selected letters & speeches*. Richmond, Vic.: Aurora Books with David Lovell Publishing.

government in which the two parties would take part' (CAVR, 2005, Chapter 7, 31).

Although FRETILIN and the UDT both supported independence, the relationship was an uncomfortable one; the UDT in particular felt increasingly threatened by FRETILIN's mass following and its continuing claim to be the sole representative of the people of Timor-Leste. What really divided these parties, however, were the militant ideologies on their extremes who accused each other, and, by extension each other's parties, of being 'fascist' or 'communist'. For example, the UDT accused some members of FRETILIN of being former elements of the PIDE (Portuguese Secret Police), while FRETILIN accused the UDT of being opportunists and wanting to maintain the fascist regime in Timor-Leste. FRETILIN also accused APODETI members of being traitors and reactionaries who wanted to sell Timor-Leste to Indonesia (Guterres, 2006).

The UDT-FRETILIN coalition was put under pressure by external powers. The Portuguese administration, first, was internally divided and hence lacked sufficient political backing to carry out its decolonisation programme.³¹ Indonesia, for its part, deliberately incited friction between the coalition partners through, for example, its special relationship with the UDT

³¹ According to the British newspaper *The Guardian*, inter-party tensions were exacerbated by extreme leftist and rightist elements in the Portuguese delegation of Timor-Leste: 'They [the UDT and FRETILIN] appear to have stumbled into a conflict in the interests of neither because of Portuguese meddling by both right and leftwing elements. (...) Between them, they [the Portuguese] injected into the two little half-baked political parties some of the hatred and the suicidal hostility of the struggle in Portugal itself.' Woollacott, M. (1975, 20 October) 'Timor is ripe for Jakarta plucking', *The Guardian*.

party leaders. Less than six months after the formation of the UDT-FRETILIN coalition, the UDT decided to withdraw. In the context of the decolonisation programme, the Portuguese Governor tried to get all parties at the negotiating table in Macau but failed as FRETILIN refused to participate. FRETILIN members with a nationalist-Marxist view who gained a majority position in the party considered FRETILIN as the sole representative of the Timorese people and disparaged negotiations with other parties. In addition, they considered Portuguese officials to be imperialists (Taylor, 1999). For the leadership of the UDT, FRETILIN's absence at the Macau meeting confirmed the idea that FRETILIN had radicalised. Indonesia, meanwhile, planted rumours of a planned FRETILIN coup and of arms entering Timor-Leste from China. In addition, Indonesian officials assured the UDT leadership of military support if they could prevent a left-wing regime coming to power in Timor-Leste (Taylor, 1999: 50).

On 11 August 1975 the UDT launched an 'attempted coup' and detained hundreds of FRETILIN leaders and supporters throughout the territory. On 15 August FRETILIN's military wing, FALINTIL (*Forças Armadas de Libertação de Timor-Leste*³²), was established. Under the command of Rogério Lobato³³, FALINTIL responded with a 'counter coup' on 20 August. With the backing of the majority of the Timorese members of the Portuguese military, it effectively regained control of Timor-Leste on 24 August. It is

³² Armed Forces for the National Liberation of Timor-Leste.

³³ Lobato would become Minister of Interior Affairs in the FRETILIN-led Government between 2002 and 2006. His involvement in the crisis of 2006 in which the army clashed with the police forces led to his resignation. See, ICG (2006) 'Resolving Timor-Leste's Crisis', Jakarta/Brussels: International Crisis Group.

worth underlining that FALINTIL was, therefore, not born out of the struggle against Indonesia but in the context of an internal armed conflict in which between 1,500 and 3,000 Timorese and several Portuguese were killed (CAVR, 2005). When the UDT carried out its coup, it killed some FRETILIN members and, in retaliation, FRETILIN arrested and killed many APODETI and UDT leaders in late 1975 and early 1976 (CAVR, 2005).³⁴ The former President of FRETILIN, Xavier do Amaral, told the Commission for Reception, Truth and Reconciliation (CAVR):

'We were in the midst of war, we had no transport, medicines or food,' he said. 'Some of the prisoners were very ill. If we let them survive, they could have fallen into enemy hands, to be used against us. So we took a decision to kill them. That was a common decision, taken by every level of the leadership' (CAVR, 2005).

The CAVR (2005) reported that several hundred people, predominantly UDT detainees imprisoned during FRETILIN's rule, were tortured and killed by FRETILIN sympathisers between December 1975 and January 1976.³⁵ The remnants of the Portuguese administration retreated to the island of Ataúro, and left Timor-Leste for good on 8 December 1975.

³⁴ One of the most serious attacks was, according to CAVR's report a FRETILIN assault on the village of Maulau (Maubisse, Ainaro) in which around 40 people, mainly UDT supporters, were killed.

³⁵ During this time several hundreds of detainees were killed in Alieu, Maubisse (Ainaro), and the area of Same (Manufahi) as FRETILIN/FALINTIL retreated from the advancing Indonesian forces. Several senior FRETILIN leaders were directly

With FRETILIN in power, the leaders of UDT, KOTA, *Trabalhista* and APODETI fled to the border region that fell more firmly under Indonesian military control. Under the tutelage of Indonesia these parties were joined in the MAC (*Movimento Anti-Comunista*³⁶) (Lawless, 1976). This anti-FRETILIN coalition signed the 'Balibo Declaration' in which it accused the party of obstructing a peaceful solution to the conflict and the right of the people of Portuguese Timor to self-determination. The proclamation stated that the whole former Portuguese Timor colony would be integrated with Indonesia, and described this as the strongest avowal of the feelings of the people of Portuguese Timor. It asked the Indonesian government and people to take the necessary steps to protect the lives of the people who now considered themselves Indonesian but who lived under FRETILIN's reign of terror and fascist practices with the acquiescence of the Portuguese government (CAVR, 2005, Chapter 3: 57). In anticipation of an Indonesian invasion, on 4 December, Alkatiri, Ramos-Horta, Abílio Araújo, Rogério Lobato, and Roque Rodrigues left Dili, not to return for twenty-four years. In exile in Mozambique, they formed the external delegation of FRETILIN (Hill, 2002, 172).³⁷

Exploiting the pretext that Timor-Leste was in political chaos and suffering from FRETILIN's communist yoke, on 7 December 1975 Indonesia

implicated in the killing. CAVR (2005) '*Chega!*'. Available at <http://www.cavr-timorleste.org/en/chegaReport.htm> (last accessed 11 September 2013).

³⁶ Anti-Communist Movement.

³⁷ These expatriates would take up important positions in the first cabinet of an independent Timor-Leste. This group became known as the 'Maputo Group' or 'Mozambique Clique'. See: Kingsbury, D. (2009) *East Timor: The Price of Liberty*. New York: Palgrave Macmillan.

invaded Timor-Leste. According to Indonesian officials, its army did not invade Timor-Leste, but helped to 'liberate' it by allowing 'Indonesian volunteers to put an end to FRETILIN's reign of terror' (Department of Information Republic of Indonesia, 1983). The resultant deaths (an estimated 80,000 by April 1977) were thus not the responsibility of the Indonesian army, but the 'tragic consequences of the fratricidal struggle between the Timorese belligerents themselves' (Dunn, 1983).

In sum, in 1974 a tiny group of educated Timorese founded no fewer than six different political parties. The majority of the party leaders were descendants of the *liurai* that had been recruited into the Portuguese administration. Some of these parties gambled on external support in an effort to strengthen their position inside Timor-Leste: the UDT (initially) hoped for Portuguese support, APODETI anticipated Indonesian feedback, whilst ADITLA expected to be supported by Australia. The KOTA leadership, finally, wanted to return to the indigenous kinship system where they traditionally held prominent positions. FRETILIN with an overly nationalist agenda was the most popular party in Timor-Leste.³⁸ Its growing popularity triggered, however, a genuine power struggle between FRETILIN and, principally, UDT. Tensions between both parties culminated into a short but intense armed conflict in which thousands of Timorese were killed. The CAVR report noted that the internal armed conflict 'left deep wounds in East Timorese society which continue to be felt to this day' (2005, Chapter 3: 43).

³⁸ FRETILIN won 55% of the votes during the 1975 elections for local councils. See: Taylor, J. G. (1991) *Indonesia's Forgotten War: The Hidden Story of East Timor*. London: Zed Books.

Party relations under Indonesian occupation

When the Indonesian forces invaded Timor-Leste in December 1975 the country was still embroiled in an internal conflict. The brief armed struggle caused a new rift between political factions that Indonesia exploited in order to control the area. During the 24 years of Indonesian occupation, new fault lines developed between the Timorese. First, tensions emerged between the pro-integrationist parties APODETI and UDT. Second, violent clashes erupted between members of the resistance movement. Third, a fault line developed between political leaders of the old resistance movement and the leaders of a new independence movement.

Shortly after its invasion, Indonesia established the first Provisional Government (*Pemerintahan Sementara Timor Timur*, PSTT) of Timor-Leste. Most positions in the Provisional Government were filled with Timorese supporters of integration, predominantly prominent members of APODETI and the UDT (CAVR, 2005). For example, Arnaldo dos Reis de Araújo, the President of APODETI, and Francisco Lopes da Cruz, the President of the UDT, were appointed as the Head and Deputy Head of the Provisional Government respectively. One of the tasks assigned to this Provisional Government was to carry out propaganda against FRETILIN (Guterres, 2006). When, on July 1976, Timor-Leste was formally declared as the 27th province of the Republic of Indonesia, Araújo was appointed Governor and Da Cruz Vice-Governor of the new Provincial Government.

Friction between pro-Indonesian parties

The inclusion of both APODETI and the UDT in local government generated conflict between the two parties. Conflicts arose over, amongst other issues, the control of positions in the Indonesian administration. The CAVR reported that in appointing local government officials the Indonesians gave priority to former members of APODETI, while former members of the UDT had to be content to be their assistants and deputies. An example of conflict within the integrationist camp occurred between one of the founders of the UDT, Mário Carrascalão, and APODETI member, Abílio Osório Soares, over government appointments. Carrascalão, as governor of Timor-Leste, marginalised some of Soares' political allies from APODETI by appointing his friends to key government posts (Guterres, 2006). When, in 1992, Soares was nominated as governor of Timor-Leste, Carrascalão mounted opposition. Later, Carrascalão's faction of the UDT decided to join the resistance movement. APODETI leaders were then appointed to high positions, while Carrascalão's close friends were sidelined.

Divisions within Timorese pro-Indonesian parties were encouraged by the Indonesian military as well. For example, the Indonesian military encouraged APODETI members, Tito Baptista, Domingos Koli Soares and Armindo Mariano, to accuse governor Soares of cooperating with the resistance when the latter became too critical of Indonesian policy in Timor-Leste (Guterres, 2006). With the support of Indonesia both factions would form pro-autonomy groups that were reported to be involved in the violence that surrounded the 1999 UN-sponsored popular consultation. The Domingos, Armindo and Tito faction formed a pro-autonomy radical group

FPDK (*Forum Persatuan, Demokrasi dan Keadilan*³⁹) that carried out campaigns of intimidation and terror against members of the Resistance throughout 1999. Soares' group, with the support of the UDT leader, Lopes da Cruz, established the BRTT (*Barisan Rakyat Timor Timur*⁴⁰), a more moderate pro-autonomy faction.

Conflicts in the resistance movement

Hostilities also developed between members of the resistance movement. The growing number of Indonesian troops deployed to Timor-Leste, using increasingly aggressive methods to crush the Resistance, put severe pressure on the organisation and hence provoked violent internal conflicts. During the course of 1976, tensions in the Resistance developed between the dominant faction of FRETILIN and other nationalists (often ex-Portuguese army soldiers who came from strong Catholic and politically conservative backgrounds) who opposed that faction's strategies and leadership that was based on a radical leftist ideology.⁴¹ The idea of a single revolutionary front was enforced and anyone who rejected this was seen as a 'counter-revolutionary' and denounced as 'reactionary'. This led to a series of 'counter-revolutionary' arrests and executions (Niner, 2000).⁴² By the end of

³⁹ Forum for unity, democracy and justice.

⁴⁰ Front of the people of Timor-Leste.

⁴¹ FRETILIN officially adopted Marxism in 1977 and with it came intolerance of dissent.

⁴² Differences within the leadership of FRETILIN were largely over the role of the civilian population in the Resistance and they often had a damaging and sometimes fatal impact on the already disrupted lives of ordinary people who had evacuated to the mountains and forests with FRETILIN. Throughout these years, like their

1976, confrontations resulted in the execution of a number of prominent members of the internal opposition within FRETILIN and their supporters (CAVR, 2005). In the second half of 1977 differences within the leadership over ideology and military strategy sparked another internal purge in which Francisco Xavier do Amaral, President of FRETILIN and the Democratic Republic of Timor-Leste, was arrested for treason and expelled from the party.⁴³ Amaral's alleged supporters were arrested, and many of them were subsequently executed or died in detention (CAVR, 2005).

It was during these years that Indonesia commenced the 'Encirclement and Annihilation' operation designed to undermine the Resistance by destroying its base areas, especially its food production capacity, and torching houses belonging to known FRETILIN sympathizers. This operation started off with saturation bombing to clear the way for military advances and napalm bombardments to defoliate the trees (Pinto and Jardine, 1997). The bombardments were followed by artillery attacks and military incursions. The military surrounded the bombarded villages and compelled the villagers to move to newly created 'transit camps'.⁴⁴ FRETILIN

leaders, ordinary civilians, particularly those suspected of wanting to leave FRETILIN base areas and return to their homes, also risked being dubbed 'traitors', one consequence of which might be their execution or their death in detention. See, CAVR (2005) '*Chega!*'. Available at <http://www.cavr-timorleste.org/en/chegaReport.htm> (last accessed 11 September 2013).

⁴³ Amaral suffered severe torture and deprivation, but survived. Several of those closest to him, were executed and two of his children are reported to have died in detention of hunger. Ibid.

⁴⁴ By late 1979 an estimated 300,000 to 370,000 people were detained into these camps, which lacked sanitation, food or medical supply. The aim of internment was to break the linkages between those who had surrendered to the Indonesian armed forces and FALINTIL, in order to cut off civilian support to the guerrilla fighters and

members and its sympathisers were executed, imprisoned or deported to the island of Atauro. At the first National Conference in 1981 FRETILIN leadership summed up its losses: 85 per cent of the members of the Supreme Command had been killed; 80 per cent of the FALINTIL troops was lost, together with 90 per cent of their weapons; all FRETILIN support bases were destroyed and Indonesian troops were in control of the surviving population; all lines of communication between the remaining resistance fighters were severed and communication with the outside world cut, making it impossible to channel information to supporters overseas (Carey, 1996).

Gusmão's policy of national unity: from FRETILIN to CRRN, to CNRM, and CNRT

The near annihilation of the Resistance forced the organisation to change its military strategy from a protracted people's war into a guerrilla war fought by FALINTIL fighters. The near defeat made it clear that FRETILIN needed to shake off its radical Marxist ideology in order to enlarge its political platform. The National Conference of 1981 resulted in the foundation of the CRRN (*Conselho Revolucionário de Resistência Nacional*⁴⁵) that was intended to be an umbrella organisation for all the various nationalist groups fighting for Timorese independence, both inside and outside Timor. Although the CRRN was dominated by FRETILIN members, the organisation was considered as the first significant step towards national unity (CAVR, 2005). During the

thus to destroy the tattered remnants of the armed resistance still in the mountains and forests. Ibid.

⁴⁵ Revolutionary Council of National Resistance.

1981 conference Gusmão was elected National Political Commissar⁴⁶, President of the CRRN and Commander in Chief of FALINTIL.

These structural and, in particular, ideological changes within the resistance movement did not go unchallenged. Senior deputies in FALINTIL's General staff (all party hardliners) Kilik Wae Gae, Mauk Moruk, and Oligary Asswain, opposed Gusmão's ceasefire with the Indonesian military forces in early 1983, and his policy of uniting the Resistance under the banner of national unity, stripping FRETILIN of its dominant position and forcing it to give the UDT a seat at the table (Rees, 2004). An attempted coup by this faction failed but the fallout was heavy. Mauk Moruk surrendered to the Indonesians. His brother, Cornelio Gama (also known as L-7 or Ely Fohorai Bo'ot) was purged, and although later taken back, developed a separate power base through a cult-like organisation, *Sagrada Família*. Oligari was removed from FALINTIL and resurfaced in independent Timor-Leste as a leader of a dissident group, CPD-RDTL (*Conselho Popular pela Defesa da República Democrática de Timor-Leste*⁴⁷), that for the first years after the Indonesian departure was a major security headache for the UN Transitional Government. Kilik died under disputed circumstances and his wife became a

⁴⁶ This post previously was occupied by Alkatiri. In 1984 the party was dissolved, Marxism-Leninism ceased to be FRETILIN's ideology and the PMLF (*Partido Marxista-Leninista FRETILIN*, FRETILIN Marxist-Leninist Party, simply became FRETILIN again. CAVR (2005) '*Chega!*'. Available at <http://www.cavr-timorleste.org/en/chegaReport.htm> (last accessed 11 September 2013).

⁴⁷ Popular Council for the Defense of the Democratic Republic of Timor-Leste.

FRETILIN central committee member and eventually Deputy Minister for State Administration in the Alkatiri government (ICG, 2006).⁴⁸

The deaths and surrender of the opponents of the policy of national unity strengthened the position of Gusmão as leader of the Resistance (Niner, 2000). In 1986 a National Convergence was signed in Lisbon between the UDT and FRETILIN leaders but working together still proved difficult. The perceived 'radicalism' of the DFSE (*Delegação da FRETILIN em Serviço no Exterior*⁴⁹) was one sticking point (CAVR, 2005). Reflecting on that period, Gusmão later commented:

'In 1986, the Nationalist Convergence was formed in an attempt to dispel the climate of suspicion that existed between the political parties but, once again, good intentions were not enough to create harmony between our separate objectives.' (CAVR, 2005, Chapter 5: 34)

In 1987, Gusmão and Ramos-Horta decided to resign from FRETILIN and to transform the CRRN into the CNRM (*Conselho Nacional de Resistência Maubere*⁵⁰), an umbrella council that they hoped would encompass all political ideologies. According to both men, independence could only be achieved if the military struggle was supported by a diplomatic struggle. In the eyes of the international community a resistance movement would only

⁴⁸ It is believed that he [Kilik Wae Gae] was executed under Gusmao's orders'. See, Kingsbury, D. (2009) *East Timor: The Price of Liberty*. New York: Palgrave Macmillan.

⁴⁹ FRETILIN Delegation for the Exterior.

⁵⁰ National Council of Maubere Resistance.

be legitimate if it included all pro-independence movements, irrespective of their political colour.

In 1988, Gusmão introduced a fundamental reorganisation of the Resistance: first, the CNRM leadership broke party ties with FRETILIN, and, second, it declared FALINTIL to be unaligned with any political party, and commanded by the CNRM. Gusmão also imposed the restructuring of the DFSE into DRSE (*Delegação da Resistência em Serviço no Exterior*⁵¹) in an attempt to reinforce the new non-partisan approach and combat the perceived ineffectiveness of the DFSE, which was attributed to internal conflicts (CAVR, 2005, Chapter 5: 36). In essence, FRETILIN lost absolute control over the policies that the Resistance would follow. The fallout of this series of events reverberates in Timor-Leste today (Shoesmith, 2003).

The reorganisation of the Resistance provoked serious tensions between the CNRM and FRETILIN (Mattoso, 2005). FRETILIN's leadership and in particular the external delegation largely rejected Gusmão's policy of national unity. The Secretary-General of FRETILIN, Abílio de Araújo, was the leader of a faction that became ever more critical of the restructuring of the Resistance in general and of Gusmão in particular. Gusmão responded by having de Araújo and others replaced, claiming the party could not be led from abroad, and installing veteran resistance fighters, Lu-Olo, Mau Hudo,

⁵¹ Delegation of Resistance in Overseas Service.

and Ma'Huno (Kingsbury, 2009).⁵² Ramos-Horta became the special representative of the CNRM abroad.⁵³

The CNRM did not represent all pro-independence groups, however. Both the UDT and KOTA refused to join the organisation for various reasons. First, the UDT rejected the organisation claiming it was another metamorphosis of FRETILIN. Second, both the UDT and KOTA could not identify themselves with the name of the organisation: the term 'Maubere' was during the Portuguese colonial period used to distinguish the native Timorese from the upper class, the educated Portuguese and, to a certain degree, the *mestizos*, a half-caste group. Parties such as the UDT, which advocated continued affiliation with Portugal, and KOTA, the feudal-oriented political party, did not identify themselves with the 'common people' and therefore rejected the term 'Maubere' and, by extension, the CNRM (Soares, 2000).

The last but most successful attempt to establish an all-inclusive national unity movement was the foundation of the CNRT (*Conselho Nacional*

⁵² Another example of the problematic relationship between the CNRM and FRETILIN's external delegation (DFSE) was the latter's refusal to change into an external delegation of the Resistance (Delegação da Resistência em Serviço no Exterior, DRSE). Instead, it turned itself into FRETILIN External Delegation (Delegação Externa da FRETILIN, DEF). CAVR (2005) '*Chega!*'. Available at <http://www.cavr-timorleste.org/en/chegaReport.htm> (last accessed 11 September 2013).

⁵³ Federer explains that Ramos-Horta's mixed Portuguese-Timorese racial background prevented him from being genuinely accepted as a popular leader of the people of Timor-Leste. Ramos-Horta therefore chose Gusmão, to whom he always demonstrated great loyalty, to become the president of CNRM. See, Federer, J. (2005) *The UN in East Timor: Building Timor Leste, a Fragile State*. Darwin: Charles Darwin University Press.

*da Resistência Timorese*⁵⁴) in April 1998. 'Maubere' was removed from the title and replaced with 'Timorese'. As an umbrella organisation for pro-independence groups, the purpose of the CNRT was to facilitate the transition towards self-government and independence. It claimed to represent a rejection of party politics in favour of an inclusive, pluralist system based on the need to build national unity and engage all sections of Timor-Leste's society in the common cause of national liberation (Walsh, 1999). In 1992, Gusmão, together with other members of the resistance, had been captured and imprisoned in Indonesia. Nevertheless, he was elected as the President of the CNRT and Ramos-Horta was appointed Vice-President. Inside Timor-Leste, Mario Carrascalão was appointed as 'silent' (secret) Vice-President. The CNRT included - besides FRETILIN and the UDT - parties such as KOTA, the pro-autonomy party APODETI, and non-political organisations such as the Church.

Although the CNRT incorporated and represented the main Timorese political parties, internal co-operation still proved difficult. According to Federer (2005), internal friction existed because some members of the CNRT lacked democratic experience, he explains:

'The gathering of East Timorese from inside and outside, with different levels of exposure to the modern world led to contradictions. As was natural, principles applying to traditional forms of organization

⁵⁴ National Council of Timorese Resistance.

featured strongly, and led to dissatisfaction on the part of those who had a greater exposure to modern practices. As a result, the selection of delegates was bitterly criticised for the lack of procedures to ensure true representation. Similarly, the deliberation, decision-making, and voting-procedures were denounced as insufficiently democratic, lacking candour and transparency' (Federer, 2005, 54).

One month after the foundation of the CNRT, in May 1998, the President of Indonesia, General Suharto, was forced to resign. President Habibie, his successor, demonstrated a more flexible attitude with regard to the Timor-Leste issue. Habibie announced that he was willing to allow a 'popular consultation' on autonomy in Timor-Leste, and, most importantly, should the vote for autonomy be rejected, Indonesia would be willing to grant full independence.

The political breakthrough provoked a backlash in Timor-Leste, however. Tensions developed between the pro-autonomy and the pro-independence supporters and were deliberately encouraged by Indonesia's military apparatus that opposed Habibie's policy of appeasement. Indonesian military officials formed, trained and financed Timorese militias. Often acting together with Indonesian forces, the same militias instigated a campaign of violence designed to intimidate the pro-independence movement and to

ensure a pro-Indonesian result in the popular consultation.⁵⁵ Many of the pro-autonomy supporters were members of APODETI and the UDT. For example, the political wing of the pro-autonomy campaign included the FPDK⁵⁶, which was led by the former district administrator of Dili and APODETI member Domingos Soares, whereas the BRTT⁵⁷ was being directed by the UDT President Lopes da Cruz. These groups were closely linked to and funded by the civil administration and used to channel funds from the government and the military to the pro-Indonesia militia forces (CAVR, 2005).

The popular consultation took place on 30 August 1999. Despite intimidation by militia groups, 98 per cent of the population went to the polls. An overwhelming majority rejected autonomy (78.5 per cent) and thus voted for independence. In the militia violence between 1,200 and 1,500 civilians were killed (Robinson, 2003). The World Bank reports that over 75 per cent of the population was displaced in the weeks following the ballot results, and almost 70 per cent of physical infrastructure was destroyed or rendered inoperable (World Bank, 1999). During the violence, FALINTIL, the armed wing of the resistance movement, remained confined to military camps in five locations across the territory on the orders of its commander,

⁵⁵ 'Those who betrayed integration' formed a particular target for militia groups. Members of the Carrascalão family, for example, were considered as traitors. In 1999, 12 people were killed when militiamen and TNI attacked the house of Manuel Carrascalão. Robinson, G. (2003) 'East Timor 1999: Crimes Against Humanity', OHCHR (United Nations Office of the High Commissioner for Human Rights).

⁵⁶ See fn. 39.

⁵⁷ See fn. 40.

Xanana Gusmão.⁵⁸ The UN force International Force in East Timor (INTERFET) was deployed in September 1999 to restore security and deal forcefully with pro-Indonesian militias (United Nations Security Council, 1999a). Two months later, peace was restored.

In sum, throughout the Indonesian occupation new political divisions emerged. One fault-line ran through pro-independence and pro-integration supporters, more specifically between FRETILIN on the one hand, and the UDT, APODETI and some other small parties on the other hand. The division was deliberately encouraged by the Indonesian armed forces that used members of the UDT and APODETI in a variety of roles during and after the occupation, including as auxiliaries, translators, informants and administrators. In 1999, Indonesian military officers recruited members of roughly the same parties into pro-autonomy militia groups in an effort to intimidate the pro-independence supporters and to ensure a pro-Indonesian result in the popular consultation. Several members of these militias were local government officials who felt threatened by the imminent referendum.

Another fault-line developed between the more moderate members of the resistance movement and their radical, Marxist counterparts. The latter group won out and purged the so-called counter-revolutionaries from the party. FRETILIN members who were willing to co-operate with the UDT or

⁵⁸ Gusmão ordered a unilateral cantonment of FALINTIL forces in 1999 to prevent more killings by pro-Indonesian militias. He explained: 'We knew the strategy of the Indonesian generals, and we wanted to avoid falling into their trap. They wanted to show that East Timorese were fighting each other, so no UN intervention would have come.' Cristalis, I. (2009) *East Timor: A nation's bitter dawn*. London: Zed Books.

other political parties sometimes risked being imprisoned, tortured and sometimes killed by their fellow party members. When Gusmão assumed the leadership of the Resistance the number of these executions was curtailed.⁵⁹

Instead of changing the party from the inside, Gusmão and Ramos-Horta decided in 1988 to resign from FRETILIN to form a new resistance movement, the CNRM. This development gave rise to a third fault-line between the Timorese, more specifically between the leadership of FRETILIN and the CNRM. Only ten years later, in 1998, the CNRT successfully incorporated all Timorese political parties. So, the creation of the CNRT demonstrates the adaptability of the member parties to work together toward the common goal of independence. Yet, the fact that political cooperation took almost twenty-five years and was only realized when independence became a real political option gave evidence of distrust between the members of the historical political parties of Timor-Leste. The violence inflicted by Indonesian-backed militias created a new rift between supporters and opponents of independence. Unlike in 1975, however, most of the people who opposed independence left Timor-Leste.

⁵⁹ While 49% (561/1,145) of documented killings and disappearances in 1975 were attributed to FRETILIN/FALINTIL, its share of the total fell to 16.6% (563/3,398) in the period 1976-84 and kept on falling during the remaining years of the conflict, to 3.7% (18/488) of killings and disappearances in 1985-98 and to 0.6% (5/898) in 1999. See, CAVR (2005) '*Chega!*'. Available at <http://www.cavr-timorleste.org/en/chegaReport.htm> (last accessed 11 September 2013).

Reorientation under the UN Transitional Administration

The UN Security Council decided to fill the administrative vacuum that emerged in Timor-Leste in the wake of the conflict. To this end, the Security Council created the United Nations Transitional Administration in East Timor (UNTAET) that assumed overall responsibility for the administration of Timor-Leste (United Nations Security Council, 1999b). This responsibility included the development of the capacity for self-government. Under the transitional administration of the UN a power struggle took place along the political lines that were drawn by divisions in the former resistance movement. In addition, the politicisation of the new security sector demonstrated that old feuds still dictated Timorese politics.

In July 2000, seven months after the installation of UNTAET, a kind of proto-government was established where power was shared between UN officials and the leadership of Timor-Leste. The 'First Transitional Government' included a National Council (NC) with representatives exclusively from Timor-Leste, and a Transitional Cabinet where the Timorese held four of the eight portfolios (see Table 3.1). The National Council (NC) was established as a type of transitional 'proto-parliament', authorised to initiate, modify, and recommend draft regulations, and to amend draft regulations subject to the approval of the head of the UNTAET, the Transitional Administrator (TA) Sergio Vieira de Mello (UNTAET, 2000a). Similarly, all decisions taken by the Transitional Cabinet were ultimately subject to the approval of the TA (UNTAET, 2000b).

Table 3.1: Composition of the Transitional Cabinet, July 2000

Department	Name	International / National
Political Affairs	Peter Galbraith	International
Police and Emergency Services	Jean-Christian Cady	International
Finance	Michael Francino	International
Justice	Gita Honwana-Welch	International
Economy	Marí Alkatiri	National
Internal Administration	Ana Pessoa	National
Infrastructure	João Carrascalão	National
Social Affairs	Filomeno Jacob	National

Source: Nassrine Azimi and Chang Li Lin (2003) 'The United Nations Transitional Administration in East Timor (UNTAET): Debriefing and Lessons', Leiden: Brill Academic Publishers, p. 289.

On paper the TA appointed the members of the Cabinet, in reality he left the selection of the four domestic ministers largely to Gusmão (Chesterman, 2002). Gusmão and (initially) Ramos-Horta did not participate in the Transitional Cabinet but remained in the CNRT to help with the civic education of the Timorese and to prepare them for elections (BBC Summary of World Broadcasts, 15 July 2000). Two of the chosen ministers were FRETILIN members (Ana Pessoa and Marí Alkatiri) and one was the head of the UDT party (João Carrascalão). The final representative came from outside the political establishment, with Filomeno Jacob of the Catholic Church taking the fourth post. Ramos-Horta joined the Transitional Cabinet in October 2000. His belated appointment was the outcome of a political struggle between the FRETILIN leadership that opposed his appointment and the CNRT leaders Gusmão, Mário Carrascalão and Ramos-Horta who wanted the

latter to be included in the cabinet. The CNRT troika won out and Ramos-Horta was appointed minister of foreign affairs in the First Transitional Cabinet.⁶⁰

The development of formal institutions of political representation and the inclusion of local actors in these institutions went hand in hand with a gradual break up of the CNRT and the emergence of new Timorese political parties. In his report to the Security Council delivered on 29 September 2000, the TA Sergio Vieira de Mello pointed out that the CNRT congress of August 2000 brought to light differences between the leadership of CNRT. According to him, there was a friction between the main party, FRETILIN, as well as the UDT, on the one hand, and the CNRT leadership, on the other, leading to the emergence of new political parties and an intensification of political activity and discord amongst the Timorese political leaders (United Nations Secretary-General, 2001).⁶¹ In the aftermath of the CNRT Congress, FRETILIN rejected all resolutions made during the Congress and officially declared their withdrawal from the national unity body. An important reason for FRETILIN's withdraw from the organisation was the party's dissatisfaction with the newly elected leadership. According to the Secretary General of FRETILIN, Alkatiri, the only change that was made during the congress was to

⁶⁰ The CNRT leaders resigned from the umbrella organisation in order to exert pressure on the UNTAET to include Ramos-Horta in the Transitional Cabinet. See: Dodd, M. (2000, 28th August) 'Timor in crisis as leaders resign'. Available at: <http://www.lexisnexis.com>.

⁶¹ In 2001 three new parties were established: PSD (*Partido Social Democrata*), Social Democratic Party; PDC (*Partido Democrata Cristão*), Christian Democratic Party and PST (*Partido Socialista de Timor*), Socialist Party of Timor. In addition, KOTA (*Klibur Oan Timor Ass'wain*), Association of Timorese Heroes or Sons of the Mountain Warriors, was originally established in 1974 but revived in 2000.

strengthen the power base of three people - Gusmão, Ramos-Horta, and Mario Carrascalão. So, he concluded, 'the change has been for the worse' (BBC Summary of World Broadcasts, 2 September 2000).

After the CNRT Congress verbal disagreements escalated into street battles, and ethnically-motivated, geographically-oriented and racially-driven conflicts (Soares, 2003). According to Garrison (2005), the frustration of the expected partnership between the UN and the CNRT during the transition period contributed to the collapse of the CNRT as an umbrella organisation in August 2000 and, thus, to the emergence of political competition for dominance. The CNRT was formally dissolved on 9 June 2001.

Elections for a Constituent Assembly

On 16 March 2001 the TA decided that the elections for a Constituent Assembly (CA) would be held the following August. To this end, the UN issued regulation 2001/2 establishing the basis of the election of a CA to draft a Constitution that would enter into force on Timor-Leste's independence.⁶² According to the regulation, a CA would prepare and adopt a constitution within 90 days after its election. Most importantly, the regulation stipulated that the CA would turn into the first parliament of an independent Timor-Leste, if so provided in the Constitution.⁶³ In addition, it defined a mixed

⁶² UNTAET. 2001a. On the Election of a Constituent Assembly to Prepare a Constitution for an Independent and Democratic East Timor. Regulation No. 2001/2, 16 March 2001.

⁶³ The resolution ruled out the idea of adopting an Interim Constitution to allow for more extensive civic education and consultation as some in the NGO community had suggested. Moreover, it dispensed with the TA's preference to authorize a non-

system for the CA elections: 75 representatives would be elected at a national level by proportional representation, and 13 representatives (one for each district) would be elected on a plurality basis (first-past-the-post). The purpose of this mixed system was to promote representativeness and inclusion, enabling as many organised parties and social groups as possible to participate in writing the constitution.⁶⁴ Finally, the regulation established an Independent Electoral Commission entrusted with preparing and conducting the elections and formulating the registration requirements for parties wishing to contest the 30 August 2001 CA election. In order to prevent the participation of parties with pro-Indonesian leanings, and to clarify the position of parties with 'doubtful' policies, political parties needed to meet some requirements to be registered.⁶⁵ These requirements did not prevent any pre-existing parties from registering however (Morrow and White, 2002). In total sixteen political parties registered: 968 party candidates and five national independent candidates competed for the 75 national seats and

elected Constitutional Convention to draft the constitution Morrow, J. and White, R. (2002) 'The United Nations in Transitional East Timor: International Standards and the Reality of Governance', *Australian Year Book of International Law*, 22, 1-46.

⁶⁴ Chesterman claims that the choice for proportional representation was politically motivated, an effort at 'electoral engineering' intended to reduce the likelihood of FRETILIN winning a large majority that was considered 'undesirable' for an emerging democracy. See, Chesterman, S. (2005) *You, the people: the United Nations, transitional administration, and state-building*. New York: Oxford University Press.

⁶⁵ All political parties and candidates seeking to contest the election were required to endorse a legislatively prescribed notice that they were registering 'for the purpose of nominating candidates for election to a Constituent Assembly to prepare a constitution of an independent and democratic East Timor'. Additionally, a registering party was required to provide a 'written declaration signed by the leader and all other officers of the political party that they will continuously reside in East Timor for at least three months prior to the date of the election'. UNTAET. 2001a. *On the Election of a Constituent Assembly to Prepare a Constitution for an Independent and Democratic East Timor*. Regulation No. 2001/2, 16 March 2001.

84 party district candidates and eleven independent candidates campaigned for the thirteen district seats in the CA. Each voter had the right to cast two ballots; one for a national representative (either a political party or an independent candidate) and one for a district representative (a party or independent candidate).

The CA election campaigns incited open conflict not only between political parties but also among their sympathizers (Soares, 2003). During the election campaigns old rivalries re-emerged. Alkatiri, for example, denounced Xavier do Amaral, the current president of the ASDT party, as an Indonesian collaborator. In addition, FRETILIN leadership accused the UDT party of masterminding the Indonesian takeover. As a response to the allegation, the UDT leaders accused FRETILIN of having been communist in 1975, prompting the UDT to mount an anti-communist coup (Guterres, 2006). The election campaigns also displayed on-going animosity between Alkatiri and Gusmão: the latter not only ignored FRETILIN rallies and attended a rival Democratic Party (PD) rally instead, but also publicly rebuked Alkatiri for FRETILIN's aggressive conduct of the campaign (Shoesmith, 2003). As divisions deepened, fear of chaos during the election became widespread. To ensure that the election would proceed without violence, two legal documents were prepared. First, the sixteen contesting parties were invited to make a declaration of peace and renounce violence

during the campaign.⁶⁶ The TA referred to the so-called Pact of National Unity as ‘an essential part of our strategy to guarantee security during the electoral campaign’ and suggested it was ‘intended to reassure those East Timorese who are fearful that the electoral process will be marred by political violence’ (UNTAET, 2001b). In addition, the UNTAET issued a regulation on electoral offences that ‘intends to enhance the safety, secrecy, freedom, fairness, and credibility of the elections and deter disruptions of the electoral period’.⁶⁷

The election for the 88-member CA took place on 30 August 2001, precisely two years after the popular consultation on the future political status of Timor-Leste. FRETILIN was the undisputed winner of the CA elections. On a national level it won 43 of the 75 seats. On a district level, twelve of the thirteen seats went to FRETILIN representatives; one seat was won by an independent candidate in the district of Oecussi. The results of the CA election are presented in Table 3.2 below. The elections went peacefully and the International Electoral Commission declared that the criteria of free and fair elections were met. The turnout was 91.3 per cent, which was a slight decrease as compared to the popular consultation of 1999 in which 98 per cent of the registered voters participated. In total 384,248 votes were casted, 20,743 of which (5.4 per cent) were declared invalid.

⁶⁶ The National Party of Timor (PNT) and the National Republic Party of Timor-Leste (PARENTIL) did not sign the pact of national unity.

⁶⁷ UNTAET. 2001e. On Electoral Offences for the Election of a Constituent Assembly. Regulation No. 2001/11, 13 July 2001.

Table 3.2: Timor-Leste Constituent Assembly election results, 30 August 2001

Party or Candidate*	Total valid votes	Votes as a % of total valid votes	Seats
FRETILIN	208,531	57.4	55
PD	31,680	8.7	7
PSD	29,726	8.2	6
ASDT	28,495	7.8	6
UDT	8,584	2.4	2
PNT	8,035	2.2	2
KOTA	7,735	2.1	2
PPT	7,322	2.0	2
PDC	7,181	2.0	2
PST	6,483	1.8	1
Independents	5,341	1.5	1
PL	4,013	1.1	1
UDC/PDC	2,413	0.7	1
APODETI	2,181	0.6	0
PPT	2,026	0.6	0
PARENTIL	1,971	0.5	0
PDM	1,788	0.5	0
Total	363,505	100	88

*See list of abbreviations

Source: Vasconcelos, P. B. D. and Cunha, R. S. D. (2009) 'Semipresidencialismo em Timor: Um Equilíbrio Institucional Dinâmico num Contexto Crítico', in Lobo, M. C. and Neto, O. A. (eds) *O Semipresidencialismo nos Países de Língua Portuguesa*, Lisbon: Imprensa de Ciências Sociais, 254.

FRETILIN garnered 57 per cent of the vote and 64 per cent of the seats.

Ultimately, representatives of twelve parties and one independent took seats in the CA. Given that FRETILIN won an overall majority in the CA election, the TA largely delegated the right to appoint the members of the second

transitional cabinet to the party. On September 19 2001, the Council of Ministers was formed and included ten ministers, three secretaries of state and seven vice-ministers (see Table 3.3 below).

Table 3.3: Composition of the Council of Ministers, September 2001

Department	Name	Party affiliation
Chief Minister & Minister of Economy and Development	Marí Alkatiri	FRETILIN
Foreign Affairs	José Ramos-Horta	N/P
Justice	Ana Pessoa	FRETILIN
Finance	Fernanda Borges	N/P
Internal Administration	Antoninho Branco	FRETILIN
Health	Ruí Maria de Araújo	N/P
Water and Public Works	César Vital Moreira	FRETILIN
Transport and Communication	Ovídio de Jesus Amaral	FRETILIN
Education, Culture, and Youth	Armando Maia	N/P
Agriculture and Fisheries	Estanislau da Silva	FRETILIN

Source: UNTAET Daily Briefing 'New East Timorese Government Sworn-In', 20 September 2001.

Of the ten ministers, six were FRETILIN affiliates and four independent. The development of a defence force and a police service formally remained the responsibility of the TA, Vieira de Mello. Despite international pressure, FRETILIN did not include Gusmão in the FRETILIN-dominated Council (Dodd, 2001). Two members of Timor-Leste's second largest party, the PD, were appointed to the position of vice-minister. According to Tansey (2009), the

second transitional government included independents and members of the PD because of the sustained pressure the TA placed on FRETILIN leadership. It needs to be emphasised, however, that the Chief Minister Alkatiri refrained from including members of the PD in the Council of Ministers. Moreover, the non-partisanship of two ministers is open to question.⁶⁸

The constitution-writing process

The Constitutional Assembly formally commenced its work on 15 September 2001. The process by which the constitution was drafted, amended, and finally adopted was, according to several observers, dominated by FRETILIN, the party that occupied 55 of the 88 seats in the CA (Baltazar, 2004; Carter Center, 2004; Tansey, 2009). Of the twelve parties represented in the CA only five parties presented a draft of the new constitution (FRETILIN, UDT, PSD, KOTA, PPT). FRETILIN's draft was used as the base text for discussion. However, the party was reluctant to accept amendments to its draft. Given that FRETILIN held a majority position in the CA and political parties such as ASDT and PDC voted with FRETILIN, recommendations for amendments or additions were easily voted down. Indeed, neither the team of five international constitutional experts brought in by UNTAET, nor the input from public consultations, nor drafts presented by the four other political parties brought any serious modifications to the FRETILIN draft (Garrison, 2005). Of the twenty-one amendment recommendations, the CA only adopted

⁶⁸ According to Guterres, Ruí Maria de Araújo and Armino Maia are in fact FRETILIN affiliates. See: Guterres, F. D. C. 2006. *Elites and Prospects of Democracy in East Timor*. PhD thesis, Griffith University.

four (Baltazar, 2004). According to a North-American NGO, the voting process in the CA led to 'increasing frustration and a sense of futility among many of the smaller parties, who felt that their opinions and suggestions, as well as those of civil society, were disregarded in the drafting of the constitution.' (Carter Center, 2004, 43). In addition, Regulation 2001/2 stipulated that the CA 'should become the legislature of an independent East Timor, if so provided in the Constitution'.⁶⁹ So, not only did FRETILIN's majority position in the CA enable the party to dictate the content of the constitution, its de facto alliance with the ASDT also allowed the FRETILIN to define its own power in the first government of an independent Timor-Leste.

The prospect of governmental power may have motivated FRETILIN to minimize constitutional limits on the executive branch of government. The opposition wanted power to be distributed equally between the presidential office, the parliament and the government in order to create a system of 'checks and balances' (Guterres, 2006).⁷⁰ FRETILIN favoured a premier-presidential system where the powers of the president would be constitutionally restricted (Tansey, 2009). Alkatiri was aware not only that a government without Gusmão would lack legitimacy, but also that Gusmão was the most likely candidate to become president. FRETILIN's proposal to adopt a premier-presidential system was supported by TA De Mello and most

⁶⁹ UNTAET. 2001a. On the Election of a Constituent Assembly to Prepare a Constitution for an Independent and Democratic East Timor. Regulation No. 2001/2, 16 March 2001.

⁷⁰ Guterres does not specify as to whether the opposition favoured a pure presidential system or a president-parliamentary system.

Portuguese legal advisors.⁷¹ Gusmão, by contrast, favoured a presidential system.⁷² Given the fact that FRETILIN dominated the CA with 55 of 88 seats, the party's proposal passed and was enshrined in the new constitution.

Another issue that generated inter-party friction was the CA's decision to transform itself into Timor-Leste's first parliament. UN Regulation 2001/2 that established the basis of the election of a CA to draft a constitution stipulated that the body would turn into the first parliament of an independent Timor-Leste, if so provided in the constitution.⁷³ FRETILIN's majority position in the CA allowed the party to appoint itself as the first legislature of an independent Timor-Leste. Minority parties like PSD and PD were reported to be more upset with the Assembly's decision to directly transform itself into the first Parliament than they were with the rest of the Constitution (Carter Center, 2004). João Carrascalão, President of the UDT party, threatened to resign from the CA once the Constitution was promulgated. For his part, Alkatiri warned that he would not participate in any provisional government if the Assembly voted to hold legislative elections after independence. On 31 January, of the 88-member CA 65 representatives voted in favour of the Assembly's transformation, 16 voted

⁷¹ De Mello did not want a presidential regime, since he thought a presidential regime led by Gusmão would be the shortest way to establish some kind of dictatorship in Timor-Leste. According to Gaspar, a Portuguese university professor and political advisor to presidents Mário Soares and Jorge Sampaio on Macau and Timor-Leste, Gusmão hated De Mello and De Mello hated Gusmão. Interview with Prof. Carlos Gaspar, Lisbon, 30 January 2009.

⁷² Interview with Dr. Marí Alkatiri, Dili, 17 May 2013

⁷³ UNTAET. 2001a. On the Election of a Constituent Assembly to Prepare a Constitution for an Independent and Democratic East Timor. Regulation No. 2001/2, 16 March 2001.

against, two abstained and five representatives were absent (UNTAET, 2002a). The constitution was finally adopted on the 22 March 2002, with 72 of the 88-member assembly voting in favour and 14 against, with one abstention and one absentee (UNTAET, 2002b) .

Presidential elections

Presidential elections took place on 14 April 2002. According to the Constitution, the president is popularly elected for a 5-year period and can serve two terms in office. He or she shall be elected from a single national constituency through a run-off ballot system (UNTAET, 2002d). Two candidates competed for the post of president: Francisco Xavier do Amaral, the President of ASDT, and independence leader Gusmão. Amaral was nominated by ASDT and the youth party, PARENTIL. Gusmão's candidature received the endorsement of nine parties: PSD, PD, UDT, KOTA, PNT, PST, UDC/PDC, PTT, and PDM (UNTAET, 2002c). The largest party in the legislature, FRETILIN, officially did not support either candidate.⁷⁴ Despite the party support, Gusmão insisted that his name appeared on the ballot without party endorsement. In all 364,780 valid votes were cast, of which Gusmão received 82.69 per cent and Francisco Xavier do Amaral 17.31 per cent. A little over 3.5 per cent (13,768) of the total amount of ballots was declared invalid (United Nations Security Council, 2002). The turnout was

⁷⁴ Francisco Xavier do Amaral was the first president of FRETILIN in 1975. Purged by FRETILIN's central commission in 1977 do Amaral was officially rehabilitated by FRETILIN in May 2000.

estimated to be 86.3 per cent (UNTAET, 2002c). The presidential elections were considered to be free and fair.

In comparison to the 2001 elections for a CA, considerably less political party campaigning was observed over the course of the presidential election (Carter Center, 2004). Yet, the real competition occurred between Gusmão and FRETILIN, the party that would dominate the first cabinet of an independent Timor-Leste. During his electoral campaign Gusmão pledged to act as a countervailing power to FRETILIN. His objective as president would be 'to look at those who rule and see that they can respond to the needs of the people' (McDonald, 2002). For his part, Alkatiri urged FRETILIN supporters to vote for Francisco Xavier do Amaral, or to cast blank (invalid) votes (Guterres, 2006). Members of FRETILIN who joined Gusmão's rallies were disciplined. Lastly, but very significantly, Gusmão's candidature was openly supported by high officials in the F-FDTL (*FALINTIL-Forças de Defesa de Timor-Leste*⁷⁵) (Rees, 2004).

The formation and politicisation of the security sector

A fundamental component in any state-building mission is the formation of a legitimate coercive force. However, regulation 1272 that established UNTAET and endowed it with overall responsibility for the administration of Timor-Leste did not elaborate on the development of the Defence Forces. Indeed, the mandate of an in essence state-building mission did not provide direct

⁷⁵ Defence forces of Timor-Leste.

guidance to UNTAET on the possible establishment of a Timorese Defence Force or on the future role of FALINTIL – the military wing of the former resistance movement. According to Hood (2006), the legal omission existed because UN officers doubted the appropriateness of engaging the UN in the development of a Defence Force and felt that the UN charter precluded UN peacekeeping missions such as UNTAET from assisting armed groups. The UNTAET and many other international actors considered the ‘FALINTIL-issue’ simply too controversial. The net result was that FALINTIL fighters were confined to barracks between 1999 and 2001.⁷⁶ Poor physical conditions and the uncertainty over their future meant that FALINTIL became increasingly marginalised and faltering discipline within the force began to pose a security threat.⁷⁷ By 23 June 2000, Gusmão - Commander in Chief of FALINTIL and President of the CNRT - reported that FALINTIL was in a state of revolt. In September 2000, the First Transitional Cabinet approved the establishment of the F-FDTL consisting of 1,500 regular soldiers (divided into two battalions) and 1,500 reservists.

The UNTAET transferred responsibility for the development of the F-FDTL to the Office of Defence Force Development (ODFD), a proto-ministry of

⁷⁶ After the post referendum destruction and violence and the arrival of International Force for East Timor (INTERFET) September 1999, FALINTIL High Command agreed to a single cantonment in Aileu (a mountain village 50 km south of the capital, Dili) where some 1,000-1,300 FALINTIL gathered.

⁷⁷ Rees argues that conflicts within FALINTIL cantonments emerged since it was the first time that many FALINTIL had to cohabitate with each other and it created a situation where long standing differences of opinion and political rivalries became raw and exposed. See: Rees, E. (2004) 'Under pressure: FALINTIL – Forças de Defesa de Timor-Leste Three Decades of Defence Force Development in Timor-Leste 1975-2004', Geneva: DCAF (Geneva centre for the Democratic Control of Armed Forces).

defence headed by Roque Rodrigues⁷⁸ and staffed with bilaterally funded international military and civilian defence experts. The International Organisation of Migration (IOM) was assigned to conduct a socio-economic survey of FALINTIL members. The UNTAET accepted a list compiled on the basis of the survey, which was vetted by the FALINTIL High Command, from which 650 were selected for the defence force and approximately 1,300 would be integrated into civilian life.⁷⁹

The process of recruitment and selection politicised Timor-Leste's security sector (Conflict Security and Development Group, 2003). UNTAET, the sovereign power of Timor-Leste, de facto delegated the selection for the F-FDTL to the FALINTIL High Command – a group that consisted entirely of Gusmão loyalists (Rees, 2004). Consequently, the FALINTIL High Command ensured that the officer corps of the F-FDTL was selected from those FALINTIL commanders loyal to Gusmão and to FALINTIL commander, Brigadier-General Taur Matan Ruak, who in 2012 was elected President of Timor-Leste. The selection process was what one Western security analyst called 'political demobilization' through which 'Xanana's friends got in and his enemies were left out' (Dodd, 2002). Some of the FALINTIL commanders that were excluded from the F-FDTL and had a hostile relationship with

⁷⁸ The appointee had previously been Chief of Staff to the CNRT President, Xanana Gusmão.

⁷⁹ According to Rees, the FALINTIL High Command almost certainly exacted this price in exchange for their cooperation in retiring the majority of FALINTIL. See: Rees, E. (2004) 'Under pressure: FALINTIL – Forças de Defesa de Timor-Leste Three Decades of Defence Force Development in Timor-Leste 1975-2004', Geneva: DCAF (Geneva centre for the Democratic Control of Armed Forces).

Gusmão found a position in FRETILIN's Central Committee.⁸⁰ The FALINTIL High Command also ensured effective control over the second battalion by limiting recruitment to 18- to 21-year-olds with a high school education. According to Shoesmith (2003), these prerequisites effectively excluded from the national army those FALINTIL veterans who had not been recruited into the first battalion and whose loyalty to Ruak and Gusmão was questionable.

The composition of the F-FDTL revealed another much older fault line, namely between the two Timorese groups, the Firaku and the Kaladi.⁸¹ Whereas this social division existed under Portuguese rule, it regained prominence during the resistance struggle. According to a popular belief, the Firaku, people from the eastern half of Timor-Leste, resisted the invasion more and fought much harder against Indonesian occupation than the inhabitants of the western part of Timor-Leste, the Kaladi. Most of the recruits that were selected for the first battalion of the F-FDTL were Firaku. So, the core of the F-FDTL was identified with the President and with a particular group, the Firaku.⁸² The socio-linguistic imbalance in the composition of the army was considered to be an important driving force behind the security crisis of 2006 (Simonsen, 2009). This crisis stemmed largely from the sacking of soldiers from the mainly western part of Timor-Leste. After their dismissal the ex-soldiers became part of the power struggle

⁸⁰ A number of younger Sagrada Familia activists were elected to FRETILIN Central Committee in August 2001. See: *ibid.*

⁸¹ See fn. 15. This split has also been described as the Loro sa'e-Loro manu divide.

⁸² In a play on words, many western youth refer to the F-FDTL as the as 'Forces Firaku Distritu Tolu Lorosae' (Firaku forces of the three eastern districts).

between President Gusmão and Prime Minister Alkatiri. In the next chapter we will further explain the causes and consequences of the 2006 crisis.

The disgruntled ex-FALINTIL fighters and other veterans who were not selected for the F-FDTL threatened internal security as early as January 2001 (Conflict Security and Development Group, 2003). On 1 February 2001, FALINTIL was officially retired and the F-FDTL was established in fact and in law.⁸³ Of the roughly 1,900 FALINTIL members, only 650 were selected for the F-FDTL (Carthy, 2002). Some of the excluded members, together with clandestine activists, founded the so-called 'political security groups' that challenged the legitimacy of the F-FDTL between 2001 and May 2002. An example is the CPD-RDTL, headed by Oligari Asswain who was not recruited for the F-FDTL. Asswain was one of the FALINTIL commanders that organized a (failed) coup against Gusmão in 1983. Another group that rose to prominence at this time was *Sagrada Família*, led by a former FALINTIL Commander L-7 (also known as Cornelio Gama or Ely Fohorai Bo'ot) who also nurtured bitter, historical grievances against the FALINTIL Command and against Gusmão in particular. In August 2001, during the election campaign, the first FALINTIL commander, Rogério Lobato, promised that since many fighters had not been absorbed into the new army, FRETILIN would create a 'new concept' to accommodate them (ICG, 2006). Lobato was, however, not given a position in the new FRETILIN government, a move that rankled the country's 1975-era Defence Minister. In the beginning of 2002,

⁸³ UNTAET. 2001d. On the establishment of a defence force for East Timor. Regulation no. 2001/1, 31 January.

Lobato founded the Association of Ex-Combatants 1975 (AC75). The FRETILIN-linked veteran group functioned as an umbrella organization for paramilitary security groups that included disaffected former FALINTIL and clandestine activists.⁸⁴ In May 2002, Lobato organised several thousand ex-FALINTIL to march on Dili, ostensibly to celebrate independence but almost certainly to show that he was a force to be reckoned with. On 20 May, he was taken into the council of ministers as minister for interior administration, overseeing local government and the police. He had gambled and won on Alkatiri's deciding that he could control Lobato better on the inside than outside.⁸⁵ In April 2002, after Gusmão was elected president, Roque Rodrigues was appointed Secretary of State for Defence. Rodrigues represented a compromise candidate for the highly sensitive position – acceptable to the President, the Prime Minister and F-FDTL High Command (Rees, 2004). However, the relationship between the Secretary of State for Defence, Rodrigues, and the Minister of Interior, Lobato, was considered tense (Rees, 2004).⁸⁶

Whereas UNTAET's mandate had not made provision for a military force, it recognized the requirement of a police force and called for the rapid development of 'a credible, professional and impartial police service' (United

⁸⁴ FALINTIL constituted one of the three pillars of resistance, along with the external diplomatic and the internal (non-combatant) clandestine network.

⁸⁵ The decision to include Lobato was similar to 'appointing Al Capone to run the bank or Imelda Marcos to run the shoe factory' see: McDonald, H. (2006, 24 June) 'Timor on the tightrope'. Available at: <http://www.lexisnexis.com>.

⁸⁶ Rodrigues and Lobato lived in exile in Mozambique and Angola during the Indonesian occupation of Timor-Leste but fell out subsequent to Lobato's 1983 conviction for diamond smuggling in southern Africa.

Nations Secretary-General, 1999). The recruitment for the PNTL (*Polícia Nacional de Timor-Leste*⁸⁷) started in January 2000 and only 18 months later, in August 2001, the PNTL was created by law.⁸⁸ The UN Civilian Police (CIVPOL) was largely responsible for selecting the recruits of the PNTL and Timorese consultation and participation in the selection process was limited (Conflict Security and Development Group, 2003). However, the CNRT leadership endorsed the recruitment of 370 former officers of the Indonesian National Police (POLRI) who were predominantly from the Western half of Timor-Leste. The core of the F-FDTL consisted of former FALINTIL fighters and veterans predominantly from the eastern part of Timor-Leste. Consequently, the decision inflamed the relations with the former FALINTIL fighters and veterans and laid the foundations for a deeply fractionalized force and severe animosity between the PNTL and F-FDTL.

So, at the dawn of independence the Alkatiri Government inherited a politicised and internally fractionalized security apparatus. Old divisions in the anti-Indonesian resistance movement were institutionalised in the Timorese security institutions with one political grouping (President Gusmão's allies) finding a home in the defence force and, as the next chapter will demonstrate, dissidents finding a home in the police service.⁸⁹

⁸⁷ National police of Timor-Leste.

⁸⁸ UNTAET. 2001c. On the Establishment of the East Timor Police Service. Regulation no. 2001/22, 10 August.

⁸⁹ Dissidents in Timor-Leste tend to fall into the category of those who consider themselves veterans of the resistance and who feel that they have received nothing in return. They can vary from FALINTIL to clandestine operatives, unemployed youth, or those who feel FALINTIL, as a historical institution and a modern institution, belongs to FRETILIN and not those who currently control it. See: Rees, E.

In sum, throughout the UN transitional administration in Timor-Leste old rivalries between members of the so-called historic parties resurfaced. First, conflicts within the umbrella organisation for national unity occurred between the former political opponents that led to the collapse of the organisation of national unity, the CNRT. FRETILIN withdrew from the CNRT because none of its party members was represented in the newly elected board. Second, the hostilities that surrounded the campaigns for the CA elections gave evidence of the conflictual nature of inter-party relations in Timor-Leste. In addition, the political discourse that was used by leaders of the different parties echoed old rivalries. For instance, FRETILIN denounced the former leader of the ASDT party as an Indonesian collaborator and accused the UDT party of masterminding the Indonesian takeover. For their part, UDT leaders accused FRETILIN of having been communist in 1975, prompting the UDT to mount an anti-communist coup. Third, using its dominant position in the CA, FRETILIN assigned limited power to the President in the Constitution.⁹⁰ The party anticipated a political or even a constitutional crisis if Gusmão as leader of the Resistance would be barred

(2004) 'Under pressure: FALINTIL – Forças de Defesa de Timor-Leste Three Decades of Defence Force Development in Timor-Leste 1975-2004', Geneva: DCAF (Geneva centre for the Democratic Control of Armed Forces).

⁹⁰ Pedro Bacelar de Vasconcelos and Ricardo Sousa da Cunha used Shugart and Carey's method, later modified by Metcalf (2000), to measure the powers of the president of Timor-Leste. They rate the 'legislative powers' of the president of Timor-Leste at 4.5 on a scale of 0–28 and the 'non-legislative powers' at 4 on a scale of 0–16, making the president of Timor-Leste the one with the most limited powers in the Lusophone world. See: Vasconcelos, P. B. D. and Cunha, R. S. D. (2009) 'Semipresidencialismo em Timor: Um Equilíbrio Institucional Dinâmico num Contexto Crítico', in Lobo, M. C. and Neto, O. A. (eds) *O Semipresidencialismo nos Países de Língua Portuguesa*, Lisbon: Imprensa de Ciências Sociais, 231-260.

from playing a political role in an independent Timor-Leste. In an effort to silence Gusmão politically and, at the same time, to strengthen FRETILIN's own relative power, the CA curtailed the President's constitutional power. Fourth, the presidential elections of 2002 demonstrated that the political cleavage that separated the leader of the Resistance, Gusmão, from the secretary-general of the most popular party, Alkatiri, was far from bridged. Gusmão's presidential candidacy, for example, was supported by almost all parties but not FRETILIN. In addition, friction between both leaders surfaced in political discourse. Gusmão, for example, forewarned FRETILIN he would keep a close eye on the government whereas Alkatiri discouraged its electorate to vote for Gusmão. Finally, the politicisation of the security sector is, perhaps, the most vivid example that political rivalry did not end when UNTAET temporarily took control of Timor-Leste. The core of the F-FDTL consisted of Gusmão loyalists drawn from the Firaku area whereas the police service included former officers of the Indonesian national police and dissidents who predominantly came from the Kaladi area. The politicisation of the security sector caused divided loyalties within the very system that was supposed to provide security to the citizens of Timor-Leste. The situation created a window of opportunity for the Timorese leadership to use non-democratic and illegitimate means of coercion to compete for power.

Conclusion

The aim of this chapter has been to control for the effect of existing socio-political tensions on the relationship between semi-presidentialism and political conflict in the post-independence period. We focused on the relative

cohesion of the political elite prior to its adoption of a semi-presidential constitution. Our finding suggests that, contrary to what some scholars and journalists have claimed, the pro-independence movement was marred by internal divisions.⁹¹ This chapter demonstrated that the political elite of Timor-Leste was not a monolithic entity. Differences between political leaders on ideology and policy waxed and waned during the period under study. Although political relations were highly conflictual in the middle to late 1970s they gradually improved. In 1998 all political parties were unified in the national umbrella organisation for independence, the CNRT. Democratic elections in 2001 and 2002 to a certain extent revived old rivalries. In the next chapters we will analyse whether the semi-presidential system has maintained or even worsened these differences or whether it has permitted some form of power-sharing where these differences could be managed and perhaps eased.

⁹¹ Jarat Chopra, for example, considered the pro-independence movement stable and unified. See: Chopra, J. (2000) 'The UN's Kingdom of East Timor', *Survival*, 42, 27–39. Similarly, in *The Economist* it was argued that 'if nation-building cannot succeed in such a small and relatively homogeneous spot, it will have little chance in bigger and more complex places such as Afghanistan and Congo'. See: *The Economist* (2007) 'Timor-Leste: a half-built nation'. Available at <http://www.economist.com/node/9010794> (last accessed 21 February 2011).

CHAPTER 4

Cohabitation

The Constitution of Timor-Leste was adopted by the Constituent Assembly on 22 March 2002 and entered into force on 20 May 2002. Gusmão was elected President in April 2002. Alkatiri, Secretary-General and leader of the most popular party in Timor-Leste, FRETILIN, headed a one-party cabinet with a comfortable parliamentary majority. This situation can be characterised as a period of cohabitation. Cohabitation refers to a situation where the president and prime minister are from opposing parties and where the president's party is not represented in the cabinet.

This chapter examines the effect of cohabitation on the relationship between the President, Prime Minister and the parliamentary majority from April 2002 to June 2006. We find that cohabitation went hand in hand with conflict, especially but not exclusively over defence policy. We also find that Timor-Leste's post-conflict context may have reduced the level of presidential activism. The fact that several institutions did not work in May 2002 may explain why the President did not exercise some powers that the constitution conferred on him. The empirical evidence supports the critics of semi-presidentialism who associate cohabitation with institutional conflict.

This chapter is structured as follows. In the next section we justify why we consider the first period of government a cohabitation situation and recapitulate the hypotheses about cohabitation that were identified in chapter 1. The main findings are presented into three separate sections: 'Conflict in the legislative process', 'Conflict in the appointment and dismissal

process' and 'Proclamatory powers'. The latter category includes institutional conflicts that manifested themselves in official speeches and press statements. In the concluding section, we discuss whether the empirical findings correspond to arguments about cohabitation.

Cohabitation in Timor-Leste

In this chapter, we consider the period from April 2002 when Gusmão won the presidential elections to June 2006 when Alkatiri resigned to be a period of cohabitation. In the literature cohabitation refers to a situation where the president and prime minister are from opposing parties and where the president's party is not represented in the cabinet (Elgie, 2010). In Timor-Leste President Gusmão was not formally affiliated to a political party and, therefore was considered non-partisan. According to Elgie (2008), cohabitation cannot emerge in semi-presidential democracies where the president is non-partisan.⁹² Elgie's definition, however, presupposes a full-fledged political society in which political demands are channelled through political parties. In Timor-Leste, like in many other new democracies, political organisation lagged behind political participation in the form of elections (Huntington, 1996). Indeed, the party of President Gusmão was only established after the presidential elections and the introduction of the semi-presidential system. In other words, party affiliation, or non-

⁹² In his blog post on Timor-Leste, Elgie identified the government period from 2002-2006 as a possible period of cohabitation. See: Elgie, R. 2011b. Difficult Cases of Cohabitation – East Timor. *The Semi-Presidential One* [Online]. Available from: <http://www.semipresidentialism.com/?cat=23> [Accessed 25 June 2012].

partisanship, should be regarded with some suspicion in Timor-Leste. Here, though, following Dennis Shoesmith who defined this period as a form of 'conflictual cohabitation' (2007: 227), it is argued that Timor-Leste's first government period was a situation of cohabitation for two reasons. In the first place, long before the introduction of Timor-Leste's semi-presidential system Gusmão and Alkatiri experienced serious difficulties working together. The previous chapter described at length their conflictual relationship. During this early period the competition between Gusmão and FRETILIN essentially was a struggle over the leadership and ideological foundation of the resistance movement. Gusmão wanted parties other than FRETILIN to become part of the independence struggle. However, Gusmão's policy of national unity brought him into serious conflict with the FRETILIN leadership at the end of the 1980s. A similar dispute arose during the formation of Alkatiri's Cabinet in April 2002. President Gusmão suggested forming a 'Government of National Unity', but the Prime Minister and Secretary General of FRETILIN decided otherwise. 'There will not be this sort of government,' Alkatiri said. 'If there was one, I would not be in it.' (Jolly, 2002) True to his word, the Prime Minister exclusively appointed ministers from FRETILIN for his Cabinet.⁹³

A second reason to classify Timor-Leste's first government period as an example of cohabitation is that Gusmão's was *de facto* partisan, that is to say, opposed to FRETILIN. Although in the presidential elections of 2002 he

⁹³ Prime Minister Alkatiri's Cabinet included two non-partisan ministers: Minister of Foreign Affairs, José Ramos-Horta and Minister of Health, Rui Araújo.

ran as an independent, his candidature was publicly supported by virtually all political parties except for FRETILIN. FRETILIN had offered to support Gusmão's presidential candidacy but the latter rejected the backing of the party.⁹⁴ The FRETILIN leadership, for its part, urged its members to vote for his opponent Francisco do Amaral (ASDT), or to cast blank votes. In addition, after the resignation of Prime Minister Alkatiri in 2006 Gusmão was quick to form a new party, the CNRT, which, according to its founder, was intended to 'knock the FRETILIN party off its pedestal as the dominant political force and remove its majority in the parliament' (Patterson, 2007). These developments cast doubt on Gusmão's claim to be a non-partisan President situated above party politics. In sum, the political configuration that emerged in Timor-Leste in 2002 can reasonably be designated as a situation of cohabitation.

Hypotheses on cohabitation

As demonstrated in chapter 2, most scholars of semi-presidential systems believe that a situation where the president and prime minister are political opponents and where the president's party is not represented in the cabinet is likely to cause conflict that may ultimately threaten the stability of democratic regimes (Linz, 1994; Skach, 2005b; Kirschke, 2007). In particular, young democracies are vulnerable to the political instability caused by this

⁹⁴ Lusa (2002g, 13 February) 'East Timor: Gusmao Rejects Fretilin 'Pressure' To Run as Independent'. Available at: <http://www.etan.org/et2002a/february/10-16/14fretl.htm>; Lusa (2002a, 14 February) 'Fretilin Leader Offers Gusmao 'Unconditional' Presidential Backing'. Available at: <http://www.etan.org/et2002a/february/10-16/14fretl.htm>.

type of situation. The tug-of-war over executive power may slow down the decision-making process and cause political stalemate. Cohabitation may even lead to democratic collapse when the military supported or not by the president or prime minister usurps all power so as to 'restore' the political process. Here, it needs to be emphasised that Timor-Leste's democratic system did not collapse during the period 2002-2006. However, if the expectations about semi-presidentialism are correct, then we should observe conflict. Thus, the first hypothesis derived from work on cohabitation was:

H1: Under cohabitation, conflict is expected to take place between the President and Prime Minister and between the President and the parliamentary majority.

Under the Constitution of Timor-Leste the President holds unilateral powers and shares power with other institutions. Unilateral powers are powers that are exclusively vested in the President. For example, presidential decrees do not require authorisation by either Government or Parliament. With regard to shared powers, presidential actions have to be validated by another institution. In case of foreign aggression, for instance, the President may only declare war following a Government proposal and after authorisation of the National Parliament (Section 85h). In some semi-presidential systems, like the one of Timor-Leste, these shared powers in the legislative domain are negative powers. That is, they are powers of approval or disapproval but they do not give the President the initiative to introduce legislation. Policy areas where power is shared are particularly susceptible to

institutional infighting. Foreign and defence policy are examples of areas in which institutional responsibility is shared. Linz (1994) has recognised the danger of shared power over the armed forces. He explained that presidents in semi-presidential democracies traditionally hold constitutional/legal powers over the armed forces. The fusion of executive powers over defence policy, he argued, may generate institutional infighting (1994: 58). Here we extrapolate that a similar power struggle is likely to occur in the area of foreign affairs where the president holds more constitutional/legal power as well. Thus, the second hypothesis is:

H2: Under cohabitation, conflict is expected to take place between the President and Prime Minister over defence and foreign policy.

In chapter 2 we identified how institutional conflict manifests itself under cohabitation both generally as well as in defence and foreign policy. These observable implications of institutional conflict included the use of formal powers such as vetoes, but also informal powers like presidential statements.

To test these hypotheses, we identify the president's use of legislative powers, special powers in the appointment and dismissal process and proclamatory powers. We do not test the hypotheses separately because H2 is a sub-hypothesis of H1. To be sure, evidence of institutional conflict about defence and foreign policy supports the larger hypothesis that predicts institutional conflict under cohabitation. Instead, we identify the President's use of these three powers generally and in the conclusion we reflect on

whether or not there is evidence to support the hypotheses. Before we discuss incidences of conflict between President, Prime Minister and the parliamentary majority, we first analyse the President's legislative framework.

The legislative framework

As we demonstrated in the previous section, the Constitution of the Democratic Republic of Timor-Leste gives the President certain constitutional powers. However, due to the absence of enabling legislation President Gusmão had less *de facto* power than *de jure* power during at least part of his time in office.

Firstly, the Court of Appeal started only to function in June 2003, more than one year after the Constitution became effective.⁹⁵ Under the Constitution, it is incumbent upon the highest court of justice, which is the Court of Appeal in Timor-Leste, to review the constitutionality of legislation, to provide an anticipatory or verification of the legality and constitutionality of legislation and to verify cases of unconstitutionality by omission (Section 126). So, between May 2002 and June 2003 President Gusmão was constitutionally precluded from submitting legislation to the Court of Appeal. Moreover, the Supreme Court was not established and, therefore, Gusmão could not appoint the President of the Supreme Court during his presidency. Secondly, the Council of State and the Superior Council for Defence and

⁹⁵ Judicial System Monitoring Programme (2003a) '*Court of Appeal*'. Available at <http://www.jsmp.minihub.org/English/webpage/court/ca.htm> (last accessed 3 May 2012).

Security were established only in March 2005.⁹⁶ The non-existence of the two consultative bodies may have limited the scope of presidential powers in the area of defence and international relations. Presidential acts, like the declaration of the state of siege, the state of emergency, the declaration of war and peace, to reach agreements in the area of defence and international relations need to be preceded by consultation with one or both of these institutions. Probably, it was left to the President's own legal interpretation as to whether and when he could use these powers. Thirdly, given the fact that during Gusmão's Presidency no organic law was passed to regulate the holding of a referendum, the President was not able to call on the population of Timor-Leste to express their opinion in a referendum on issues of relevant national interest. Fourthly, the Constitution grants the President powers to appoint and dismiss military officials. The appointment of the General Chief of Staff of the Defence Force requires, however, a proposal of the Government. Major General Taur Matan Ruak was an 'acting' chief of the armed forces given that the government failed to formally propose his appointment.⁹⁷ Indeed, only in June 2010 Ruak was officially appointed General Chief of Staff of the Defence Force.⁹⁸

Overall, the failure of the Government and the parliamentary majority to pass the necessary legislation significantly weakened the President's

⁹⁶ Parliamentary law 1/2005 of 9 February 2005 'Law on the Council of State', Parliamentary law 2/2005 of 3 March 2005 'Law on the Superior Council for Defence and Security'.

⁹⁷ Author e-mail exchange with Dr. Rui Feijó, legal advisor of President Gusmão between 2004 – 2006, 14 June 2013 '

⁹⁸ Decreto do Presidente da República 21/2010 de 18 de Junho 'Nomeação do Chefe do Estado-Maior General das Forças Armadas, Major General Taur Matan Ruak'.

constitutional position vis-à-vis the Government and the parliamentary majority. This form of legal obstructionism also delayed simple acts of the President for which he needed the authorisation of the Government. For example, the purchase of a system for microphones and recording equipment for the Council of State and the Council of Defence and Security, which was budgeted at about US\$ 4000, took over six months to be approved by the government (Feijó, 2006: 124). So, for some time in the period 2002-2006 President Gusmão's power to intervene in the political process was limited to political vetoes and the use of proclamatory powers.

Conflict in the legislative process

The President can influence legislation using legislative powers. According to the Constitution, the President can veto any statute (Section 85c), request the Supreme Court of Justice to undertake preventive appraisal and abstract review of the constitutionality of rules (Section 85e), submit relevant issues of national interest to a referendum (Section 85f), call for a state of emergency or a state of siege (Section 85g), grant pardons or commute sentences (Section 85i) and to conduct in consultation with the Government any negotiation process towards the completion of international agreements in the field of defence and security (Section 87d). As noted, the absence of enabling legislation and, hence, the non-existence of the President's consultative bodies may have discouraged the President from intervening in day-to-day state affairs. For some time in the period 2002-2006 it was unclear whether President Gusmão could use his power to request the Court to review the constitutionality of legislation, to declare the state of siege, the

state of emergency, war and peace, and play a role in policy making in the field of defence and international relations. In addition, the President was not able to call for a referendum. Despite the restrictions that were placed on presidential power, Gusmão intervened in the legislative process. The President used veto power and requested the Court to review the constitutionality of legislation. In addition, the President assumed emergency powers.

The President has the power to veto government decree laws and legislative bills. We found conflicting evidence as to whether President Gusmão vetoed government decree laws. José António Rosário Soares, legal advisor to current President Taur Matan Ruak, claimed that Gusmão vetoed several decree laws, which was denied by former Prime Minister Alkatiri.⁹⁹ We could not verify the accuracy of these conflicting reports as official documents on vetoes against government decree laws are not publicly accessible in Timor-Leste and were not made available to us despite a formal request for them. Therefore, we confine ourselves to vetoes of parliamentary legislation.

On 25 July 2002 barely two months after the Constitution formally came into effect President Gusmão vetoed the Bill on the Modification of the Tax System.¹⁰⁰ In his communiqué to the Nation, Gusmão claimed that the fiscal bill included disproportionate tax hikes that would especially affect the

⁹⁹ Interview with Dr. Marí Alkatiri, Dili, 17 May 2013 and with Mr. Rosário Soares, Dili, 18 May 2013.

¹⁰⁰ Lei do Parlamento Nacional 5/2002 de 16 de Agosto 'Lei de Modificação do Sistema Tributário'.

most underprivileged (ETAN, 2002a). He criticised the Government for pursuing an irrelevant and unrealistic economic policy, which contradicted the Government's long-term objectives of poverty reduction and urged Parliament to change the proposed bill (Gusmão, 2005). The President stated that he would 'leave it to the 'distinguished' [quotations in original] deputies to study and to debate these incongruent policies with greater intellectual and political dimension in the decision-making process ...' (Gusmão, 2005: 207).

Gusmão's decision to veto the Tax Bill marked the deterioration in the already difficult relationship between the President and the Prime Minister. Just a week earlier, the President had discussed and criticised the Bill on the State Budget of 2002-2003 in detail.¹⁰¹ Although the Constitution of Timor-Leste does not vest the head of state with explicit budgetary powers, the President seized the opportunity to criticise the Government's economic policy in his speech to the National Parliament. Here he reminded its members that the exercise of the mandate conferred on them by the people was meant to safeguard the interests of the people and not merely the interests of the Administration (Gusmão, 2005). Gusmão also accused Alkatiri of having used his legislative majority to speed-up the approval of the budget by Parliament with limited debate (ETAN, 2002b). The Bill on the State Budget was sent to the President for approval on 28 June but was only promulgated more than two weeks later, on 16 July 2002.

¹⁰¹ Lei do Parlamento Nacional 3/2002 de 7 de Agosto 'Lei do Orçamento Geral do Estado Para o Ano Fiscal de 2002-2003'.

In this context, the President's decision to veto the Tax Bill infuriated the FRETILIN leadership. In a media statement, senior members of the FRETILIN party made it clear that Parliament would not amend the draft law (Lusa, 2002b). Prime Minister Alkatiri accused the President of not being well acquainted with the Constitution's content and, hence, his proper competencies. The Prime Minister maintained that the Constitution of Timor-Leste does not give the President power to veto legislation on the basis of political objections (i.e. a political veto). So, according to Alkatiri, the President did not veto the bill but simply refused to sign it. He also pointed to a 'flagrant contradiction' in the President's policy: 'the budget is a forecast of revenues and expenses', Alkatiri argued, 'so the President cannot first approve the budget and then cut its revenues' (Lusa, 2002e). President Gusmão, for his part, said that he did not feel obliged to consult the Government before taking decisions. The President also confessed that he had not had any contact with the Prime Minister since the Government was sworn in on 20 May 2002. As anticipated by FRETILIN party members, Parliament overrode the presidential veto with a two-thirds majority (Lusa, 2002f). The tug-of-war between the President and the Prime Minister delayed crucial legislation. The budgetary process was put on a hold for well over two weeks while the Tax Bill was promulgated one-and-a-half months after it was first approved in Parliament. In sum, the presidential veto delayed decision-making but did not encourage the Government to change its policy.

President Gusmão also stepped in after the Bill on Immigration and Asylum¹⁰² was approved by Parliament in May 2003.¹⁰³ The bill regulated the entry, exit and status of foreigners in Timor-Leste and applied to all persons who do not have Timor-Leste citizenship. The legislation prevented, for example, foreigners from organizing political demonstrations. Parliament passed the Immigration and Asylum Bill despite protests from several national and international NGOs. Many people believed the bill would have a negative effect on the rights of foreigners working inside the country.¹⁰⁴ According to them, it would give the Ministry of the Interior the power to deport virtually any foreigner or shut down any organization that includes foreigners and is engaged in civic affairs or anything else the Government does not like (ETAN, 2003b).

When the President was asked to sign the legislation he chose first to send it to Timor-Leste's highest court, the Court of Appeal, in order to verify the constitutionality of the bill (Lusa, 2003b). It was the first time that President Gusmão had submitted legislation to the Court of Appeal. Again, before June 2003 the Court of Appeal was not operational. The Court ruled that certain provisions in the bill were indeed unconstitutional (ETAN,

¹⁰² Lei do Parlamento Nacional 9/2003 de 18 de Outubro 'Lei da Imigração e Asilo'.

¹⁰³ Secretariado Do Parlamento Nacional (2012) 'Projectos e Propostas de Lei Vetados de 2002 a 2012', Dili: Parlamento Nacional da República Democrática de Timor-Leste. In author's collection.

¹⁰⁴ Judicial System Monitoring Programme (Jsmp) (2003) 'Report on the Immigration and Asylum Law (Short Version)'. Available at [http://www.jsmp.minihub.org/Reports/jsmpreports/Imigration%20and%20Asylum%20law%202003/Imigration%20and%20Asylum%20law%202003\(e\).pdf](http://www.jsmp.minihub.org/Reports/jsmpreports/Imigration%20and%20Asylum%20law%202003/Imigration%20and%20Asylum%20law%202003(e).pdf) (last accessed 2 June 2011); La'o Hamutuk (2003, 13 May) 'Article-by-article commentary on the Immigration and Asylum Bill'. Available at: <http://www.laohamutuk.org/Justice/ImmigLaw/visacomment.html>.

2003c). Prime Minister Alkatiri, openly displeased with the ruling, accused the Court of being unprofessional and not acting within the spirit of the law. According to the Prime Minister, the Court had been subjected to outside pressures. Last but not least, Timor's head of government pledged that 'not a comma will be changed in the bill' and anticipated the legislation would receive more than the necessary two-thirds parliamentary majority to override a possible constitutional veto (ETAN, 2003c).

Notwithstanding the Prime Minister's warning, President Gusmão vetoed the Immigration and Asylum bill.¹⁰⁵ In his message to the nation Gusmão criticised Parliament for making laws that are against the constitution that they wrote themselves (Gusmão, 2005).¹⁰⁶ Eventually, Parliament overrode the presidential veto with the necessary two-thirds majority and the Law went into force on 29 September 2003 (Judicial System Monitoring Programme, 2003b; Lusa, 2003a).

In 2005 President Gusmão vetoed the Freedom of Assembly and Demonstration Bill, which was designed to regulate political gatherings.¹⁰⁷ The bill included prohibitions on 'demonstrations with the intent of questioning the constitutional order' and 'demonstrations whose objective constitutes contempt of the good reputation and respect due to the head of state and other office holders of the state institutions.' The bill required that

¹⁰⁵ Secretariado Do Parlamento Nacional (2012) 'Projectos e Propostas de Lei Vetados de 2002 a 2012', Dili: Parlamento Nacional da República Democrática de Timor-Leste. In author's collection.

¹⁰⁶ President Gusmão refers to the fact that the Constituent Assembly, the forerunner of the National Parliament, wrote and approved the Constitution.

¹⁰⁷ Lei do Parlamento Nacional 1/2006 de 8 de Fevereiro 'Liberdade de Reunião e de Manifestação'.

demonstrations and public protests be authorised by the police in advance. It prohibited demonstrations within 100 meters of government offices, diplomatic missions, political party headquarters, prisons, or key infrastructure sites, such as airports or telecommunication facilities. The bill was approved by the National Parliament in December 2004 and then sent to the President for promulgation.¹⁰⁸ In early 2005 the President decided to request the Court to review the constitutionality of several articles of the bill. The Court then ruled that sub-article 1 and 2 of article 4 were unconstitutional (UNMIT, 2005; Judicial System Monitoring Programme, 2010). Following the Court's decision in May 2005, the President vetoed the bill. After Parliament had revoked sub-article 1 and 2 of article 4 it was sent back to the President on 18 July 2005. The President promulgated the law on 16 January 2006, well outside of the time limits allowed by the Constitution. President Gusmão thus effectively delayed the legislative process of the Freedom of Assembly and Demonstration Law. First, it took him several months to send the law proposal to the Court of Appeal. Second, after the Parliament changed the content of certain articles in order to bring them into line with constitutional requirements in July 2005 the President promulgated the bill only in January 2006. The net effect was that it took well over a year before the Law on Freedom of Assembly and Demonstration went into effect.

In February 2006 President Gusmão used his veto power for the fourth time and vetoed new criminal defamation provisions in the Timor-

¹⁰⁸ Secretariado Do Parlamento Nacional (2012) 'Projectos e Propostas de Lei Vetados de 2002 a 2012', Dili: Parlamento Nacional da República Democrática de Timor-Leste. In author's collection.

Leste Penal Code. In May 2004 the Council of Ministers decided to (re-)criminalise defamation in Timor-Leste. The objective of the Defamation Bill was 'to end the situation of impunity for whoever commits defamation or injures somebody's reputation' (Siapno, 2006). In July 2005, more than one year later, the FRETILIN-dominated Parliament authorised the Government to write the new Penal Code in the form of a decree.¹⁰⁹ The President signed and promulgated the decree in September the same year. It took the Government three more months to write and approve the new Penal Code. By then, the Government chose to send the decree to the President for promulgation. The draft law sparked off mass protest among national and international organisations dedicated to the defence of press freedom. President Gusmão then requested a constitutional review of the Penal Code in February 2006, more than two months after the Parliament had first approved the legislation. Although the Court ruled that the Penal Code was in conformity with the Constitution, the President did not sign or promulgate the Penal Code and thus effectively used a pocket veto (Vasconcelos and Cunha, 2009: 239, fn. 12). The Penal Code was eventually promulgated by President José Ramos-Horta in April 2009.¹¹⁰

President Gusmão also threatened to veto the so-called 'Treaty on Certain Maritime Arrangements in the Timor Sea' (CMATS) that would

¹⁰⁹ Lei do Parlamento Nacional 15/2005 de 3 de Setembro 'Lei de Autorização Legislativa em Matéria de Processo Penal'; Lei do Parlamento Nacional 16/2005 de 3 de Setembro 'Lei de Autorização Legislativa em Matéria Penal'; Lei do Parlamento Nacional 17/2005 de 3 de Setembro 'Lei de Autorização Legislativa em Matéria de Processo Civil'.

¹¹⁰ Lei do Parlamento Nacional 6/2009 de 15 de Julho 'Primeira Alteração, por Apreciação Parlamentar, do Código Penal'.

establish a 50-50 split of royalties from the Greater Sunrise oil and gas field in the Timor Sea. Under the treaty, Australia would pay Timor-Leste US\$13.9 billion in exchange for postponing talks on the maritime boundary between the countries for the next 50 years. According to media sources, President Gusmão remained unconvinced that Timor-Leste should give up its sovereignty over oil and gas reserves that the UN believed conservatively to be worth more than US\$30 billion (Wilson, 2005). In his annual address to Parliament he accused the Government of backroom politics and shady deals with Australia. Gusmão notified the deputies that ‘questions arise around the term ‘creative solutions’ [quotations in original] expressed by the Prime Minister, and that doubts persist in the minds of people in relation to the meeting between Foreign Minister José Ramos-Horta and his Australian counterpart, when they spoke of an ‘open window’ and of ‘Christmas gifts’ [quotations in original]’ (Gusmão, 2012).

The Constitution assigns no authority to the President to initiate legislation or to modify draft laws. However, Gusmão chose to criticise the draft law on National Liberation Combatants.¹¹¹ In his message to the National Parliament President Gusmão asked for several amendments to be made to the ‘Veterans Bill’. The bill set out the criteria that had to be met in order for someone to be legally recognised as a former combatant of the national liberation front. The President argued that national liberation started on 20 August instead of 15 August 1975 and, therefore, the date

¹¹¹ Lei do Parlamento 3/2006 de 12 de Abril ‘Estatuto dos Combatentes da Libertação Nacional’.

should be changed in the bill.¹¹² Gusmão also disagreed with the criteria used to allow veterans to receive a pension, requesting that eight years as a combatant should be changed to 15 years. In addition, the President suggested that family members of former combatants who have passed away may receive a pension, whereas those who surrendered to Indonesia or political groups who provoked the surrender of large groups of people should not be recognised as former combatants (ETAN, 2005). Most of the President's suggestions were accepted by the Parliament and incorporated in the bill.

In May 2006 President Gusmão assumed full executive authority in response to the April/May 2006 political crisis.¹¹³ In the section 'Proclamatory powers' we will discuss the causes and consequences of the crisis given that the President announced the state of emergency in an address to the Nation. Here we discuss the President's use of emergency powers. On 30 May the President declared to 'take the sole responsibility in the areas of defence and national security, in his capacity as the Commander-in-Chief of the Armed Forces' in order to 'prevent the violence and avoid further fatalities, for the rapid reestablishment of the public order and the normal, functioning of the democratic institutions.' (ETAN, 2006g). The

¹¹² On 15 August, the Fretilin Central Committee announced what they called "the resumption of general armed struggle against all traitors and enemies of the people" CAVR (2005) '*Chega!*'. Available at <http://www.cavr-timorleste.org/en/chegaReport.htm> (last accessed 11 September 2013). On 20 August FRETILIN launched a "counter coup" against UDT and established *de facto* control over the territory. See chapter 3.

¹¹³ This crisis stemmed largely from the sacking of soldiers from the mainly western part of Timor-Leste. In armed clashes between the police, army and rebel soldiers more than 30 people were killed.

presidential declaration of the state of emergency was, however, not ratified by a presidential decree. Moreover, the state of emergency was declared without the express consent of the National Parliament. The Parliament only authorized the President to declare the state of emergency on 5 June 2006, six days after Gusmão's speech to the nation.¹¹⁴ What is more, Prime Minister Alkatiri denied that he handed over control of the country's two security forces to the President (Newsfeed, 2006). According to him, the President's speech had been wrongly translated. 'He is not taking control,' Alkatiri told ABC radio. 'He is co-ordinating with me in taking control of these two ... defence and security are still part of the Government and I am the head of the Government' (Taylor, 2006). The political confrontation between the President and Prime Minister over the control over Timor-Leste's fractured security forces delayed the deployment of foreign troops in Timor-Leste as well. Alkatiri seriously disagreed with Gusmão when the latter together with Foreign Minister Ramos-Horta decided to appeal to Australia for military assistance in order to restore peace and order in Timor-Leste (Agence France Presse, 2006). Prime Minister Alkatiri was strongly opposed to foreign intervention and, reportedly, embroiled with Gusmão in a 'shouting match' whether to invite Australian assistance (Butterly, 2006). The President and Foreign Minister won out, and a formal appeal – that Alkatiri reluctantly signed – was sent to Australia, Portugal, Malaysia and New Zealand.

¹¹⁴ Resolução do Parlamento 12/2006 de 5 de Junho 'Sobre as medidas de emergência para ultrapassar a crise decretadas por sua excelência o presidente da república, Kay Rala Xanana'.

In sum, President Gusmão often intervened in the legislative domain. The President's relatively weak position vis-à-vis the other state organs did not discourage him from seeking confrontation with the Prime Minister and the parliamentary majority. Not only was Gusmão seriously debilitated by legislative voids, but he was also aware that a presidential veto could be overridden by FRETILIN, which held a majority in the Parliament. Nevertheless, President Gusmão intervened in the legislative process. The President sent three laws to the Court of Appeal and vetoed four bills. The first (constitutional) veto was issued almost immediately after the Court of Appeal began to operate in June 2003. The President disrupted the legislative process in other, sometimes unconstitutional ways. Gusmão's refusal to promulgate the Timorese Penal Code is a case in point. We also conclude that the President used his legislative power specifically, but not exclusively, to disrupt law-making in the area of national security. Except for the Tax Law, the Immigration and Asylum Law, the Freedom of Assembly and Demonstration Law, Timor-Leste's Penal Code provided the legal framework for Timor-Leste's national security policy. Institutional relations deteriorated when the President assumed emergency powers. The Prime Minister denied the state of emergency and the Parliament hesitated to authorize the President to assume emergency powers. Finally, President and Prime Minister seriously disagreed on whether to ask foreign assistance to restore peace and security in Timor-Leste. The Parliament, for its part, effectively reduced the President's power to a minimum. All presidential vetoes were overridden by Parliament. The parliamentary majority even adopted a bill that had been declared unconstitutional.

Conflict in the appointment and dismissal process

As noted earlier, the President was stripped of some important appointment and dismissal powers. The President could not appoint the President of the Court because the Supreme Court was not established. Likewise, the President could not appoint military officials given that the Prime Minister did not propose candidates. Notwithstanding these restrictions, President Gusmão did intervene in the appointment and dismissal of officials. The Constitution authorizes the President to appoint and swear in the Prime Minister designated by the party or alliance of parties with parliamentary majority (85d), appoint, swear in and remove Government members from office following a proposal by the Prime Minister (Section 86h), appoint the Prosecutor-General for a term of four year (Section 86k), appoint the President of the Supreme Court of Justice and swear in the President of the High Administrative, Tax and Audit Court (Section 86j), appoint and dismiss, following a proposal by the Government, the General Chief of Staff of the Defence Force, the Deputy General Chief of Staff of the Defence Force, and the Chiefs of Staff of the Defence Force (Section 86m) appoint and dismiss ambassadors, permanent representatives and special envoys, following a proposal by the Government (Section 87b)

First, Gusmão refused to appoint the Prime Minister's candidate for the post of ambassador to Australia. Abel Guterres was the first choice of President and Foreign Minister, Ramos-Horta, but his candidacy was vetoed in July 2002 by Prime Minister Alkatiri who backed Antoninho Bianco (Jolliffe, 2002a). In an interview on 13 June 2002, the Prime Minister was adamant that Bianco had been nominated, a statement confirmed by Bianco.

Confronted with this declaration, Ramos-Horta said the appointment could not be presented 'as a fait accompli', stressing that the final say rested with President Gusmão who had to approve diplomatic appointments (Jolliffe, 2002a). Eventually, in March 2003, a third candidate, Jorge Teme, was appointed ambassador (Jolliffe, 2003a). All in all, then, Timor-Leste was unrepresented in Australia for almost a year due to the tug-of war between President and Prime Minister over the nomination of an ambassador to Canberra.

In addition, even though had hesitated initially to nominate Rogério Lobato as the first Minister of Interior Affairs in an independent Timor-Leste, tension developed between the President and the Prime Minister about the minister. Under the Constitution, the President can only dismiss cabinet ministers following a proposal by the Prime Minister (Section 86h). So, President Gusmão sought alternative ways to have Lobato fired, which brought him into serious conflict with the Prime Minister. In no fewer than eight formal speeches addressed either to the National Parliament or to the Nation, President Gusmão criticised Lobato and in particular his policy regarding the establishment and development of the Timorese police force (PNTL¹¹⁵). For example, in one of his first official speeches to the nation, Gusmão accused the Interior Minister of demagoguery and reproached him for 'exploiting the failures of the state's institutions to mobilise the population' (Gusmão, 2005: 17). Tension grew between the President and the

¹¹⁵ Portuguese acronym for 'Policia Nacional de Timor-Leste'.

Prime Minister when, on 28 November 2002, Gusmão publicly ‘ordered’ the Prime Minister to dismiss the Minister of Interior. In his speech delivered on Independence Day,¹¹⁶ Gusmão stated:

‘If independence belongs only to FRETILIN, I have no comments to make. If independence belongs to all of us, to all the Timorese, I seize this opportunity to demand of the Government to dismiss the Minister for Internal Administration, Mr. Rogério Lobato, on the grounds of incompetence and neglect’ (ETAN, 2002d).

Prime Minister Alkatiri was quick to comment on the President’s demand and asserted: ‘As head of the Government I will see who has and has not the capacity to be minister.’ The Prime Minister added: ‘I will be the one to dismiss those incapable of doing their duties. It doesn’t have to come from the President’s speech’ (APSN, 2002). In the aftermath of the Independence Day celebrations on 28 November 2002 anti-Government protest erupted in the capital and turned violent. Two protesters died and many others were injured. One of the reasons for the escalation of violence in Dili was because the police had decided to use live rounds to control the crowd (Smith, 2004a). Gusmão condemned the police performance as ‘inadequate’ and concluded that the command structure of the Timor-Leste police was ‘problematic’ (Gusmão, 2005: 52).

¹¹⁶ FRETILIN unilaterally declared the independence of Timor-Leste on 28 November 1975. See also chapter 3.

Conflict between the President and the Prime Minister about Lobato's performance as Interior Minister generally and his policy with regard to the police specifically carried on in 2003. In August 2003, the President branded the police force as downright unprofessional, totally unethical and stated that some policemen acted like 'proprietors of the state' (Gusmão, 2005: 242). In his end-of-year speech President Gusmão expressed his objection to the Government's plans to invest more money in the development of the police forces. Given the budget deficit Timor-Leste is facing, he argued, 'instead of buying more weapons and ammunition, more cars and more fuel, more rations, more tents, or more uniforms for border operation funds should be allocated to education, health, infrastructure and agriculture, in sum, for the economic development of the country' (ETAN, 2003a).

He reiterated his opposition to 'wasting money and energy in creating new police units' in his message to the nation on the second anniversary of restoration of independence in May 2004 (Gusmão, 2012). Barely two months later new anti-Government demonstrations ended in violence. The Timorese riot police fired tear gas to disperse a demonstration by hundreds of former resistance veterans and their supporters who were demanding more government support and the removal of Timorese police officers who formerly served in the Indonesian security forces (Dodd, 2004). In his speech to Parliament, President Gusmão referred to the July riots and denounced the 'extreme violence' used by the Timorese riot police to quell the unrest (Gusmão, 2012). In addition, he used his annual address to the Nation to officially distance himself from the Government's police and military policy and criticised the Government for being unable to solve the festering conflict

between the army and the police (ETAN, 2004). His caution proved justified. In clashes between the army and police nine police officers were killed when the army opened fire on one of the head offices of the police. The escalation of violence forced the Interior Minister to resign along with Defence Minister Roque Rodrigues in June 2006, after intense pressure from President Gusmão (Murdoch and Allard, 2006). Soon after their resignation President Gusmão accused Prime Minister Alkatiri of 'dirty politics' regarding his relationship with the former Interior Minister (ETAN, 2006f). Finally, on 20 June 2006 in a nationally televised speech President Gusmão threatened to resign if Prime Minister Alkatiri refused to do so. The President gave FRETILIN an ultimatum to either ask Alkatiri to resign immediately or he would tender his resignation to Parliament. Alkatiri resigned on 26 June 2006. The Prime Minister stepped down because he learned that the President had been ready to resign or dissolve the FRETILIN-controlled Parliament to press his demand for the Prime Minister's move. 'Either of these hypotheses would have been worse than my resignation', leaving an 'institutional vacuum', according to the former Prime Minister (Lusa, 2006).

In sum, President Gusmão and Prime Minister Alkatiri were embroiled in a tug-of-war over the appointment and dismissal of state officials. The Constitution does not empower the President to dismiss the Prime Minister or Government members. Nevertheless, Gusmão succeeded in 'convincing' the Prime Minister first, to dismiss the Interior Minister and the Minister of Defence and second, tender his own resignation.

Proclamatory powers

In addition to Gusmão's intervention in the legislative domain and in the appointment and dismissal process, President Gusmão made use of his power to 'address messages to the National Parliament and the country (Section 86e) and express his opinion about the Government's policies in press statements.

The President and the Prime Minister frequently disagreed on issues related to foreign policy and, in particular, Timor-Leste's relationship with Indonesia. President Gusmão and Prime Minister Alkatiri were divided over how to deal with Indonesian officers and Timorese pro-Indonesian militias who were involved in the 1999 atrocities before, during and after the UN-run ballot on independence. Whereas Gusmão favoured a 'forgive-and-forget' policy Alkatiri took a much tougher stance. In an interview with a London-based Arabic newspaper the Prime Minister declared that he did not share the President's view that Indonesian officials who had committed human rights violations in Timor-Leste should not be tried. 'I am for reforming things justly, since justice is our bridge to reform. Today, we can assess our ties with our former enemies [Indonesia], but this will bring back the problems between us. I think the amnesty is important, but after achieving justice and after everybody gets his right from the person who wronged him. Justice comes first' (Al-Hayat, 2002). Gusmão, for his part, believed that his approach was necessary to maintain the unity of Timor-Leste. 'Community building', according to him, was the key to restoring East Timor's shattered social structure and trials would only discount the value of the sacrifices

made for freedom. The President said that he believed in justice but not in revenge (Birnbauer, 2003).

One specific point on which the President and the Prime Minister disagreed concerned the payment of war-reparations from and to Indonesia. In 2001, Gusmão announced that he forgave Indonesia and would not seek reparation payments from Jakarta, which brought him on a collision course with the FRETILIN leadership who insisted that Jakarta should pay for the damage caused by its forces. However, while Alkatiri during his time as Prime Minister refrained from demanding war reparations, it was Indonesia that insisted it still held assets worth more than Rp1 trillion (US\$ 1.3 billion) in Timor-Leste, including destroyed government buildings that had been built with foreign loans (Townsville Bulletin, 2001). The Prime Minister categorically stated that he would reject any claims for compensation made by Indonesians. The President disagreed with him. In an interview with Portuguese news agency LUSA, Gusmão argued that Alkatiri's statements 'need to be avoided' and instead called for dialogue with Indonesia (Lusa, 2002c).

Another difference of opinion came to light after Indonesia's ad hoc human rights court decided to acquit four Indonesian army officers and a policeman over one of the worst massacres in Timor-Leste. During the Suai massacre on 6 September 1999 between 27 and 200 people were killed. The Prime Minister considered 'the whole process a farce' (Moore et al., 2002). President Gusmão, for his part, was concerned that Abílio Soares - the only Timorese who was convicted by the Jakarta court - would be seen as the sole culprit. Some days before the verdict, Gusmão wrote a letter to the court in

which he had pleaded for clemency. The act was widely criticised by Alkatiri, observers and analysts who considered the plea 'unconstitutional' (Lusa, 2002d). Institutional tensions also developed over the Prime Minister's initiative to establish an International Court. In the aftermath of the Jakarta trials, in August 2002, Prime Minister Alkatiri declared he was 'confident that the Government would ask the United Nations to set up an International Tribunal' (Jolliffe, 2002b). A UN-led International Tribunal, akin to those for the former Yugoslavia and Rwanda, would be established to bring to justice those responsible for the 1999 atrocities. However, Gusmão argued against the idea in his speech to the National Parliament in October 2002. 'There is talk of an International Court, but an International Court for whom? For the Timorese? I would be the first to disagree', the President told Dili's legislature in a 90-minute speech (Gusmão, 2005). He also admitted that he opposed the former UN Transition Administration's decision to set up a special court in Dili, the Serious Crimes Unit (SCU), to try crimes committed around the time of the independence plebiscite in 1999. 'Ninety-five percent of the crimes were committed during the previous 24 years' Gusmão said (ETAN, 2002c).

Gusmão strongly opposed war crime charges against former Indonesian Defence Minister and Military Chief, General Wiranto. On 24 February 2003, the SCU in Dili indicted General Wiranto and seven others for the murder, deportation and persecution of independence supporters before and after Timor-Leste voted in August 1999 for independence. According to the President, the indictment was a 'mistake' and the Court's decision did not form part of Timor-Leste's policy (Agence France Presse, 2003a). Gusmão

explained that peace, stability and progress 'greatly depend on the relationship we will forge with the Republic of Indonesia' and such indictments were not in the national interest (Agence France Presse, 2003c). Alkatiri, however, publicly dissociated himself from the remarks made by the President (Jolliffe, 2003c).

In late May, early June 2003 President and Prime Minister found a middle ground regarding delicate issues like the establishment of an international court, the indictment of General Wiranto and war reparations to Indonesia. During a trip to Jakarta, Alkatiri declared that the international community was responsible to try Indonesian officers accused of war crimes and criticised the United Nations for trying to wash its hands of the prosecutions (Jolliffe, 2003b). 'The responsibility for things like this is an international responsibility, we are not looking for ways to push for an international court,' he told in a press conference. According to Alkatiri, he had been misquoted by media reports that he was pushing for an International Tribunal (Agence France Presse, 2003b). On the issue of remaining Indonesian assets in Timor-Leste, Alkatiri said the issue must be solved through 'a step-by-step' approach (Agence France Presse, 2003b).

The President and the Government differed over other foreign policy issues. The first conflict emerged after Gusmão declared his opposition to Australia's involvement in the US-led war on Iraq. The President's views conflicted with those of Foreign Minister, Ramos-Horta, who had previously endorsed the use of force in Iraq (Rood, 2003). The second difference concerned Gusmão's statement that dialogue with Al-Qaeda was necessary to combat terrorism. The President compared the situation with the Timorese

struggle for independence from Indonesia and said that the Indonesians initially rejected dialogue but were forced to accept it in 1999. Foreign Minister Ramos-Horta considered the comparison 'inappropriate' for the President's statement offended the Indonesian military authorities by equating them with Al-Qaeda (Lusa, 2004). Finally, the Foreign Minister criticised the President's meeting with Indonesian presidential candidate General Wiranto who, as noted earlier, had been indicted for war crimes by the SCU for his role in the 1999 atrocities. He told reporters that he disagreed with the timing of the President's visit with the controversial presidential candidate and called upon the Government not to damage its reputation or the judicial process. 'The Government of East Timor has to be prudent so as not to discredit ourselves and the judicial process.' (Guillart, 2004).

A serious conflict between the President and Prime Minister erupted over defence policy. In March 2006 Defence Force Commander Ruak dismissed 591 soldiers because they had breached discipline. Prime Minister Alkatiri and Defence Minister Rodrigues supported the Defence Commander's decision, but President Gusmão was strongly opposed. In a nation-wide speech Gusmão declared that Ruak's decision to expel the 591 soldiers was 'erroneous and unjust' (Nautilus Institute, 2006). In addition, the President criticised the Defence Minister and the Defence Force Commander for being unable or unwilling to solve the problem and he urgently asked them to change their policy towards the petitioners and to 'carefully consider' the option to re-accept the ex-F-FDTL soldiers 'in order to resolve the matter accordingly' (Nautilus Institute, 2006). Prime Minister Alkatiri denounced the President's speech and declared that 'the decision [to

dismiss the soldiers] is correct and just' (ETAN, 2006e). According to Alkatiri 'the decision came from the commander of F-FDTL, following consultation with me and I agreed and fully support the decision of the Commander who has the capacity to make that decision' (UNOTIL Daily Media Review, 2006). The Prime Minister also added that the soldiers have been out of their headquarters for over two months so they should no longer be considered soldiers. The President of Parliament, Francisco Guterres of FRETILIN, shared the opinion that even President Gusmão could not reverse the Defence Commander's decision.

In April 2006 President Gusmão announced that the country's military leadership was in crisis (ETAN, 2006b). Against the background of growing tensions and anti-Government demonstrations organized by the former soldiers Prime Minister Alkatiri proposed to set up a Government Commission to look into the petitioners' complaints (Independent Special Commission of Inquiry for Timor-Leste, 2006). In addition, the Foreign Minister was nominated to talk with the protestors to put an end to the demonstrations. However, these measures proved too little too late. The demonstration turned violent and the police did not control the situation. In an attempt to restore stability Prime Minister Alkatiri called for the army to intervene. During the April 2006 riots five people were killed and more than one hundred houses were destroyed (ICG, 2006). Some 15,000 persons sought refuge in churches, public buildings and the United Nations facilities in Dili, while others left for the districts. The outbreak of another wave of violence in late May 2006 heightened friction between the President and the

Prime Minister. In clashes between the army and police nine unarmed policemen were killed and another 27 wounded.

In a response to the political crisis, the President declared the state of emergency in an address to the Nation on 30 May 2006 (ETAN, 2006g). Following the presidential speech, Interior Minister Rogério Lobato and Defence Minister Roque Rodrigues resigned. As noted earlier, the presidential declaration of emergency was not ratified by a presidential decree. Moreover, the state of emergency was declared without the express consent of the National Parliament. The Parliament only authorized the President to declare the state of emergency on 5 June 2006, six days after Gusmão's speech to the nation.¹¹⁷ In addition, the Prime Minister denied that he handed over control of the country's two security forces to the President (Newsfeed, 2006). In a nationally televised speech on 20 June 2006 President Gusmão threatened to resign if Prime Minister Alkatiri refused to do so. The President gave FRETILIN an ultimatum to either ask Alkatiri to resign immediately and take responsibility for the current political crisis or he would tender his resignation to Parliament. Alkatiri bowed to pressure from the President and resigned on 26 June 2006.

In sum, the President used presidential proclamations to criticize foreign and defence policy. President Gusmão's attacks on foreign policy brought him on a collision course with the Prime Minister and, in some cases, with the Foreign Minister. Yet, Gusmão and Alkatiri managed to reach a

¹¹⁷ Resolução do Parlamento 12/2006 de 5 de Junho 'Sobre as medidas de emergência para ultrapassar a crise decretadas por sua excelência o presidente da república, Kay Rala Xanana'.

middle ground with regard to Timor-Leste's reconciliation policy with Indonesia. By contrast, Prime Minister Alkatiri and President Gusmão did not manage to align their political agendas with respect to defence policy. The President publicly expressed his objections to the decision made by the Prime Minister to dismiss the 591 soldiers. The President then used his proclamatory powers to call upon those responsible for national security to resign.

Conclusion

In the literature cohabitation is associated with intensive conflict. In this chapter we found conflict between President Gusmão and Prime Minister Alkatiri, on the one hand, and between President Gusmão and the FRETILIN majority in the National Parliament, on the other.

President Gusmão vetoed four laws and requested the Court of Appeal three times to review the constitutionality of legislation. The parliamentary majority, in turn, overrode all presidential vetoes and even adopted a law that had been judged unconstitutional by the Court. The President challenged the parliamentary majority and disrupted legislation in other, sometimes unconstitutional ways. For example, Gusmão promulgated the Timorese Penal Code outside the time limit set by the Constitution. Most conflict occurred over defence and foreign policy. The President and the Prime Minister disagreed over defence and foreign policy laws, the appointment of ambassadors and asked for the resignation of the Ministers responsible for National Security. Also, there were very serious institutional conflicts as to whether the President was authorized to call for a state of emergency and

call in foreign troops to restore the peace and the rule of law. Using proclamatory powers the President sought public support for a change in defence policy. The President publicly opposed the decision of the Prime Minister and army commander Ruak to dismiss around 600 rebel soldiers. Whereas several disagreements over defence issue were left unresolved, the President and Prime Minister did manage to align their foreign policy agenda.

Some indicators of conflict were absent. We found that the legislative framework that provided power for the President to fully carry out his mandate was incomplete. The absence of enabling legislation and, hence, the non-existence of the President's consultative bodies may have discouraged the President from intervening in day-to-day state affairs. For some time in the period 2002-2006 it was unclear whether President Gusmão could use his power to request the Court to review the constitutionality of legislation, to declare the state of siege, the state of emergency, war and peace, and play a role in policy making in the field of defence and international relations. In addition, the President was not able to call for a referendum. Therefore, the absence of these indicators does not imply the absence of conflict.

Overall, we found institutional conflict under cohabitation. In the previous chapter we demonstrated that long before the introduction of Timor-Leste's semi-presidential system Gusmão and Alkatiri experienced serious difficulties working together. However, the fact that a semi-presidential system allows political opponents to share government power increases the likelihood of institutional conflict and, possibly, policy paralysis. In this chapter we demonstrated that cohabitation provided a mechanism for institutional conflict because it allowed President Gusmão

and Prime Minister Alkatiri to govern against each other. The next chapter will examine the effect of divided government on incidences of institutional conflict.

CHAPTER 5

Divided Government

The period from July 2006 to May 2007 was a period of divided government in Timor-Leste. In the weeks following Prime Minister Alkatiri's resignation, Timor-Leste found itself in what was called a 'surreal political world' (Jolliffe, 2006a). No fewer than eight Cabinet Ministers resigned before the Prime Minister decided to step down on 26 June 2006, leaving only a shell of the former structure, drawn from Alkatiri's staunchest supporters. Although Timor-Leste did not have an effective government, the parliamentary majority needed to approve its budget for coming fiscal year as well as electoral laws that would allow citizens to choose a new government. On 10 July President Gusmão appointed José Ramos-Horta as the new but non-partisan Prime Minister of Timor-Leste. Ramos-Horta decided to reappoint most of the Ministers who had served under Alkatiri. His Cabinet was sworn in on 14 July 2006. The political configuration that emerged on 14 July 2006 and continued until 19 May 2007 when President Gusmão left office can be classed as a 'divided government'. Divided government refers to the situation in which a legislative majority is held by a party or pre-election coalition which is different from that of the president (Shugart as cited in Elgie, 2001: 4). Although the appointment of a non-partisan Prime Minister narrowed the gap between the President and Prime Minister, President Gusmão and the FRETILIN parliamentary majority were still bitterly divided.

We find that the locus of conflict shifted from President-Prime Minister conflict into a President-Parliament conflict. As a consequence, the

President was relatively more active in the legislative process than in the appointment and dismissal process. In addition, in the run up to the presidential and the legislative elections of April and June 2007 respectively, the President openly criticised the FRETILIN party in press statements and in speeches to the National Parliament and to the Nation.

The chapter is divided into four sections. The first section presents the main arguments that associate divided government with institutional conflict. The second section looks at the political situation in Timor-Leste and justifies why we consider the government to be divided. The third section presents the main findings in relation to the hypotheses. The final section concludes if the findings correspond to the arguments.

Hypotheses on divided government

Divided government refers to the situation in which a legislative majority is held by a party or pre-election coalition which is different from that of the president (Shugart as cited in Elgie, 2001: 4). Institutional conflict stems from political infighting between officials over policy and is expected to take place when the institutions are controlled by different political parties. The situation differs from cohabitation in that the President and the Prime Minister are political allies.

The Constitution of Timor-Leste provides that the Prime Minister selects and deselects Cabinet Ministers. The Prime Minister rules over the

Ministers and indeed overrules them.¹¹⁸ The situation where the President and Prime Minister are political allies, hence, largely cancels out potential conflict between the President Gusmão and FRETILIN ministers. Yet the FRETILIN parliamentary majority is likely to (continue to) obstruct the policy agenda of the President. So, the first hypothesis is:

H1: When the government is divided, conflict is expected to occur between the President and the parliamentary majority.

In the field of foreign affairs and defence presidents traditionally hold constitutional and/or legal powers. Institutional conflict is thus more likely to hold back the political process in these policy areas. In Timor-Leste, however, as we will see the Prime Minister took charge of the defence portfolio and appointed a political ally of the President to become Foreign Minister. So, the second hypothesis is:

H2: Under divided government, the President and Prime Minister were likely to regulate institutional conflict over defence and foreign affairs.

In chapter 2 we identified different indicators of institutional conflict under divided government. These observable implications of institutional conflict included the use of formal powers such as the President's prerogative

¹¹⁸ The Constitution defines that "Government statutes shall be signed by the Prime Minister and the Ministers in charge of the respective subject matter" (Section 117).

to request the Court to determine the constitutionality of legislation and informal powers like press statements. Under divided government we expect the President to use such powers to change parliamentary laws. For its part, the parliamentary majority is expected be reluctant to countersign presidential decisions.

We do not test the hypotheses separately because H1 presupposes H2. Instead, similar to the previous chapter our findings are organized into three categories of presidential power: legislative powers, special powers in the appointment and dismissal process and proclamatory powers. In the conclusion we reflect on whether or not there is evidence to support the hypotheses. In the next section we present the empirical findings and conclude whether the findings support the theoretical expectations.

Divided government in Timor-Leste

In this chapter, we consider the Government to be divided from July 2006 when Ramos-Horta was appointed as Prime Minister to May 2007 when President Gusmão left office. In Timor-Leste, the President and the FRETILIN majority were bitterly divided and an independent Prime Minister was called in to bridge the political cleavage. The exceptional circumstances forced the President and the FRETILIN majority to agree on an independent Prime Minister while most of the Cabinet members who had served under former Prime Minister Alkatiri were reappointed.

In the wake of Prime Minister Alkatiri's resignation, there was no effective government, yet the Parliament was asked to approve its budget as well as electoral laws that would allow citizens to choose a new government.

A Prime Minister was urgently needed because Parliament needed to approve the 2006/2007 budget before 15 July. One solution to the emerging power vacuum would have been to dissolve Parliament and convoke new parliamentary elections. However, the President did not and could not call for fresh parliamentary elections for different reasons. First and foremost, no election laws existed. Only on 15 May 2006, in the midst of a political crisis, were new presidential and parliamentary election laws introduced into Parliament.¹¹⁹ However, the legislation lapsed following Alkatiri's resignation and the fall of his Cabinet in June 2006. Second, the UN rejected the proposal to hold early elections in Timor-Leste. An UN official stated that 'it was too short a time and, given the current situation, it [the UN] would be unable to prepare the logistics and organise voter security, so the idea had been abandoned' (Dodd and Fitzpatrick, 2006).

Another option to end the political standoff was to appoint a government of 'presidential initiative'. However, FRETILIN was opposed to a caretaker government appointed by the President. An inside source reportedly stated that FRETILIN did not agree with the idea that a short-term caretaker government should be appointed now to be replaced later by FRETILIN nominees (Jolliffe, 2006b). With early elections no longer an option and the possibility of appointing a government of presidential initiative excluded as well, the only option was to appoint another FRETILIN-

¹¹⁹ Secretariado Do Parlamento Nacional (2012) '*Projectos e Propostas de Lei Vetados de 2002 a 2012*', Dili: Parlamento Nacional da República Democrática de Timor-Leste. In author's collection.

dominated government. The President needed to decide in consultation with FRETILIN who would become the new prime minister. However, a compromise was not easily reached. According to a western diplomat 'the standoff, which looked to have broken was threatening to broaden from a Gusmão versus Alkatiri contest to a Gusmão versus FRETILIN conflict' (Fitzpatrick and Dodd, 2006).

Under the Constitution, the resignation of the Prime Minister automatically results in the dissolution of the Government as a whole, although the Ministers remain in office until a new Government is sworn in. The President appoints a new Prime Minister who is designated by the majority party in Parliament. In reality, President Gusmão initially refused to receive a proposal for a candidate for the post of Prime Minister from FRETILIN, stating that the current FRETILIN leadership lacked legitimacy since it had been elected at the party's May's congress by a show of hands instead of by secret ballot, as prescribed by the Law on Political Parties (Jolliffe, 2006b).¹²⁰ President Gusmão eventually agreed to enter into discussions with FRETILIN representatives, after the President of FRETILIN made a public appeal for the return of weapons (United Nations Secretary-General, 2006). Moreover, FRETILIN's Central Commission agreed that the new Prime Minister did not have to be a FRETILIN member (Cave, 2006). FRETILIN proposed the non-partisan and former Minister of Foreign Affairs, José Ramos-Horta, the non-partisan outgoing Health Minister, Rui Araújo,

¹²⁰ Lei do Parlamento Nacional 3/2004 de 10 de Fevereiro 'Sobre Partidos Políticos'.

and former FRETILIN Minister for Agriculture, Estanislau da Silva, as contenders to replace the former Prime Minister. FRETILIN wanted Estanislau da Silva or, alternatively, Rui Araújo to head the new government whereas Ramos-Horta was the President's first choice for the position (Murdoch, 2006b). On 8 July President Gusmão announced that Ramos-Horta would become the new Prime Minister of Timor-Leste (United Nations Secretary-General, 2006). Gusmão nominated Da Silva and Araújo as vice-Prime Minister's in a deal negotiated with FRETILIN.¹²¹ Four days later, the Cabinet was inaugurated with most of the Ministers reappointed to their previous portfolios. The two Ministries that needed most to coordinate with the President, namely Defence and Foreign Affairs, were entrusted to non-FRETILIN members. Prime Minister Ramos-Horta took charge of Defence and José Luis Guterres, a member of the FRETILIN splinter party FRETILIN Mudança, became Minister of Foreign Affairs.

We consider this a period of divided government because, firstly, there was still conflict between the President and FRETILIN. Alkatiri's resignation did not resolve the political impasse between President Gusmão and the FRETILIN majority. In fact, at the swearing in ceremony of Prime Minister Ramos-Horta on 10 July 2006, Gusmão again denounced the former Government. The speech is worth quoting because it reveals the continuing animosity between President Gusmão and the FRETILIN majority.

¹²¹ In an interview with the Portuguese newspaper *Público*, the President of FRETILIN, Francisco Guterres (Lu-Olo), confirmed that Ramos-Horta was the President's first choice. FRETILIN wanted Estanislau da Silva or, alternatively, Rui Araújo to head the new government Gomes, A. (2007, 1 May) 'Entrevista a Lu-Olo: "Xanana Tem um Ódio Obsessivo Contra a Fretilin"', *Público*.

'... the former Government has demonstrated incompetence, inertia and negligent behaviour in the public sectors and also in its relationship with the private sector. So, I have asked FRETILIN and the Government to redress the wrongdoings of what it failed to do and of what it did wrong. Dr. Ramos-Horta also said that the previous Government should not make excuses for their inaction, for its failure to progress, for not having done anything. (...) this Government wants transparency and an end to corruption. We ask the new Government, which remains a FRETILIN Government, to take all of it into account. It is up to the new Government to demonstrate that it really wants to improve and to correct the mistakes it has made in the recent past' (Gusmão, 2012: 187).

Secondly, chapter 3 demonstrated that Ramos-Horta and Gusmão were political allies since the mid-1980s when they broke with FRETILIN and together founded the CNRM. Under the UN Transitional Administration in October 2000, Gusmão supported Ramos-Horta's appointment as Minister of Foreign Affairs in Timor-Leste's Transitional Cabinet against the will of FRETILIN. In July 2006, Ramos-Horta was the President's first choice to succeed Alkatiri. Last but not least, Gusmão would prove to be Ramos-Horta's staunchest supporter in the latter's bid for the presidency in 2007. In sum, the relationship between the President and the parliamentary majority did not change under Ramos-Horta's leadership. However, his appointment narrowed the ideological gap between the President and the Prime Minister. In the next section we discuss whether we have found incidences of conflict

between President Gusmão and the single-party majority commanded by FRETILIN. Presidential intervention in the policymaking process indicates institutional conflict whereas the absence of presidential intervention points to the President's assent to the Government's policy. The President has three types of powers at his disposal to influence the political process: legislative powers, powers in the appointment and dismissal process, and proclamatory powers. The following three subsections will discuss the extent to which President Gusmão used the respective powers to influence the Government's policy between July 2006 and May 2007.

Presidential activism in the legislative domain

As noted in the previous chapter, the President could not call for a referendum due to the lack of a referendum law. Under divided government the Council of State and the Supreme Council of Defence and Security were functioning. Both consultative Councils broadened the scope of presidential powers in, especially, the area of security and defence.

Between July 2006 and May 2007, Parliament passed ten laws. In this period President Gusmão issued two vetoes. In addition, the President sent one bill to the Court for constitutional review. On 21 August 2006, the bill entitled 'Monthly Life Pension and Others Privileges for Former Members of Parliament' was passed by Parliament and sent to the President for

promulgation.¹²² The Pension Bill stipulated that former members of the Parliament were entitled to a monthly life pension equivalent to 100 per cent of his or her salary. President Gusmão vetoed the bill on political grounds.¹²³ Parliament then amended the Bill according to Gusmão's suggestions and returned it for approval. The President finally promulgated the Law on 23 of December 2006. Due to the Christmas recess, the Law came into force on 18 January 2007 after it was published in the official Gazette.¹²⁴

Another Pension Bill, the 'Bill on Pension for Former Officials', was passed in Parliament and sent to the President for promulgation on 14 December 2006. The former holders of the office of President of the Republic, President of the National Parliament and the Prime Ministers were entitled to a monthly life pension equal to 100 per cent of the salary and benefits earned in those duties. According to President Gusmão, the Bill was unconstitutional.¹²⁵ The President issued a constitutional veto for the reason that the draft law did not define accurately who was entitled to receive a lifelong pension (La'o Hamutuk, 2007). The President's veto letter was read to a plenary session of Parliament. The Parliament did not react for 90 days after the presidential veto and, therefore, the legislation expired.

¹²² Secretariado Do Parlamento Nacional (2012) 'Projectos e Propostas de Lei Vetados de 2002 a 2012', Dili: Parlamento Nacional da República Democrática de Timor-Leste.

¹²³ Author e-mail exchange with Mr Anildo da Cruz, legal advisor to the National Parliament of Timor-Leste, 11 October 2012.

¹²⁴ Lei do Parlamento Nacional 1/2007 de 18 de Janeiro 'Pensão Mensal Vitalícia dos Deputados e Outras Regalias'.

¹²⁵ Author e-mail exchange with Mr Anildo da Cruz, legal advisor to the National Parliament of Timor-Leste, 12 October 2012.

The President and the parliamentary majority disagreed over certain provisions in the Bill on the Election of the President of the Republic and the Bill on the Election of the National Parliament. As noted above, both election bills were drafted by Parliament and accepted for discussion in the middle of a political crisis on 15 May 2006.¹²⁶ However, the legislation lapsed after the fall of the Alkatiri Government in May 2006. One of the first acts of the new Government under the leadership of Prime Minister Ramos-Horta was to draft presidential and parliamentary election bills. Whereas previous election bills were drafted by the Parliament, the new bills were prepared by the Government. An alternative draft law for parliamentary elections that was prepared and introduced by the opposition was not accepted for discussion in the Parliament (States News Service, 2006).¹²⁷ The Parliament received the legislation from the Government on 13 July and approved both election bills on 18 December 2006. The President, in turn, promulgated the parliamentary and presidential election laws on 22 December and 26 December 2006 respectively.¹²⁸ The tug-of-war between the President and the FRETILIN majority that preceded the promulgation of the Bill on the Election of the National Parliament will be discussed in the section below on 'Proclamatory Powers' given that the President used public speeches to voice his objections against the legislation that was prepared by FRETILIN.

¹²⁶ Secretariado Do Parlamento Nacional (2012) 'Projectos e Propostas de Lei Vetados de 2002 a 2012', Dili: Parlamento Nacional da República Democrática de Timor-Leste. In author's collection.

¹²⁷ Ibid.

¹²⁸ Lei do Parlamento Nacional 7/2006 de 28 de Dezembro 'Lei Eleitoral para o Presidente da República'; Lei do Parlamento Nacional 6/2006 de 28 de Dezembro 'Lei Eleitoral para o Parlamento Nacional'.

With regard to the Bill on the Election of the President of the Republic, the President only stepped in after FRETILIN adopted an amendment one month before the presidential elections. On 20 March 2007, the Parliament changed the election bill so as to allow political parties to use party or national symbols on the ballot paper (see Figure 5.1). Five of the eight presidential candidates accused FRETILIN of ‘manipulating ‘ voters (Lusa, 2007d).

According to five presidential candidates, José Ramos-Horta, Fernando Lasama de Araújo, Lúcia Lobato, Francisco Xavier do Amaral and Avelino Coelho, the President was ‘an individual supported by a minimum of 5,000 voters’ and ‘the Constitution obstructed possibilities for presidential candidates to be proposed by political parties’ (Lusa, 2007d). President Gusmão shared their concern and sent the amended electoral bill to the Court of Appeal on 21 March in order to verify whether the amendment violated the Constitution. The Court of Appeal ruled that the legislation was consistent with the Constitution and both party and national symbols were permitted to be printed on the ballot paper (UNMIT, 2007). Following the Court’s decision, the President promulgated the presidential election law on 26 March 2007 (UNMIT, 2007).¹²⁹

¹²⁹ Lei do Parlamento Nacional 5/2007 de 28 de Março ‘Lei Eleitoral para o Presidente da República’.

Figure 5.1: Ballot paper for the 2007 presidential elections in Timor-

Leste

 <div> <p>Eleisaun Prezidensiál 2007 Eleição Presidencial 2007</p> <p>Marka ka tuu deit iha fatin ida ne'ebé ita hili. Marque, assinale ou perfure apenas uma escolha.</p> </div> 		
Francisco Guterres - Lu Olo		
Avelino M. Coelho - Shalar Kosi F.F.		
Francisco Xavier do Amaral		
Manuel Tilman		
Lúcia Maria Brandão Freitas Lobato		
José Ramos Horta		
João Viegas Carrascalão		
Fernando "Lasama" de Araújo		

One of the presidential candidates explained that the President was very preoccupied with the law, stressing that the President did not veto the law only because the approved text included many other matters besides the use of party symbols (Lusa, 2007d).

In March 2007 President Xanana Gusmão invoked emergency powers in an attempt to quell unrest in Dili, the capital city of Timor-Leste. 'The state will use all legal means, including force, to stop violence and prevent destruction of property and killing and to restore law and order,' President Gusmão said, giving peacekeepers and police the right to carry out arrests and searches without warrants (ETAN, 2007g). He also granted them special powers to break up public gatherings. The President's declaration of a state of emergency delegitimized the FRETILIN Minister Alcino Barris who was responsible for internal security. A state of emergency was never confirmed by Parliament.

In sum, we found evidence of conflict between President Gusmão and the FRETILIN majority. President Gusmão intervened in the legislative process, using his veto power and his authority to send legislation to the Court for constitutional review. All presidential legislative acts targeted 'projectos de lei'. These bills are written by deputies and do not need the signature of the Prime Minister to pass. Indeed, both Pension Bills and the Law on National Symbols were proposed by FRETILIN deputies. By contrast, President did not reject 'propostas de lei' – bills written by the Government. The parliamentary majority limited the President's power when it did not confirm the state of emergency. Yet, it refrained from overriding the Presidential vetoes or rejecting Gusmão's requests to make state visits. The

President supported the Prime Minister's defence and foreign affairs policy agenda. During his dual mandate as Minister of Defence and Prime Minister, crucial legislation regarding Timor-Leste's national defence policy was promulgated. New legislation was adopted promulgating the Regime for Military promotions, the Code of Military Discipline, the Organic Law of the Ministry of Defence, amendments to the Organic Law of the Defence Forces and a draft law on Conscription into Military Service.¹³⁰ Prime Minister Ramos-Horta was successful in the area of Foreign Affairs as well. During Ramos-Horta's period as Prime Minister two crucial agreements with Australia over the management of oil and gas resources were passed by Parliament. Both agreements, the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS¹³¹) and the Sunrise International Unitisation Agreement (IUA¹³²), were signed by former Prime Minister Alkatiri in January 2006, but rejected by President Gusmão and the parliamentary majority during Alkatiri's term as Prime Minister.¹³³ So this shows us that President Gusmão agreed with Timor-Leste's defence and foreign policy

¹³⁰ Decreto-Lei do Governo 15/2006 de 8 de Novembro 'Estatuto Orgânico das FALINTIL-FDTL'; Decreto-Lei do Governo 16/2006 de 8 de Novembro 'Estatuto Orgânico do Ministério da Defesa'; Decreto-Lei do Governo 17/2006 de 8 de Novembro 'Regulamento de Disciplina Militar'; Decreto-Lei do Governo 18/2006 de 8 de Novembro 'Regíme das Promoções Militares'.

¹³¹ Resolução do Parlamento Nacional 4/2007 de 8 de Março 'Que Ratifica o Tratado entre o Governo da República Democrática de Timor-Leste e o Governo da Austrália sobre Determinados Ajustes Marítimos no Mar de Timor'.

¹³² Resolução do Parlamento Nacional 5/2007 de 8 de Março 'Acordo Entre o Governo da Austrália e o Governo da República Democrática de Timor-Leste Relativo a Unitização dos Campos do Sol Nascente e do Travado'.

¹³³ In 2005, President Gusmão threatened to veto the CMATS agreement. Alkatiri's government ultimately signed the agreement on 12 January 2006. The IUA agreement, in turn, was signed on 6 March 2003.

during Ramos-Horta's prime ministership. Yet, the President vetoed more parliamentary laws under the divided government than under cohabitation: 20 per cent and 9 per cent respectively. In addition, the President sent more parliamentary laws to the Court for constitutional review under the divided government than under cohabitation: 10 per cent and 6.6 per cent respectively. It should be noted, however, that the sample is very small given that under divided government only ten parliamentary laws were passed, of which two were vetoed. By contrast, international agreements were reached quickly whereas under cohabitation this shared responsibility led to confusion and serious conflicts between the President and Prime Minister. Likewise, no conflicts between the President and Prime Minister occurred over the former's power to pardon or to commute sentences.

Presidential activism in the appointment and dismissal process

The tug-of-war between President Gusmão and the FRETILIN majority about the appointment of a new Prime Minister demonstrated how power-sharing under unfavourable political circumstances may transform into a power struggle. Ramos-Horta was the President's first choice. For FRETILIN, Da Silva and Araújo were the ideal appointees for the post of prime minister. The net result was that in addition to a Prime Minister two Vice-Prime Ministers were appointed. Prime Minister Ramos-Horta took charge of the Defence portfolio and entrusted his previous portfolio of Foreign Affairs to José Luís Guterres, a fervent Alkatiri opponent. All other Cabinet Ministers who had served under Alkatiri were reappointed to Ramos-Horta's new Cabinet.

While the cabinet formation process went relatively smoothly, the Prime Minister could not prevent an institutional confrontation between the President and the Parliamentary majority over the appointment of the Prosecutor General (also called Attorney General). The Constitution defines that the President may unilaterally appoint the Prosecutor General for a term of four years (Section 86k). President Gusmão's decision to appoint Longuinhos Monteiro for the post of Prosecutor General met with great resistance from the FRETILIN party. Prior to Monteiro's appointment, the party had introduced a draft resolution to restructure the criminal investigation branch and the prosecutor's office within the Public Affairs Ministry in an unsuccessful attempt to get rid of Monteiro (ETAN, 2006h; Jolliffe, 2006c; Murdoch, 2006a). The FRETILIN leadership was embroiled with Monteiro following the latter's criminal charges against former Minister of Interior Rogério Lobato and ex-Prime Minister Mari Alkatiri. Both Lobato and Alkatiri were accused of being involved in arming a hit squad to eliminate political opponents during the violence of 2006. Lobato was eventually condemned to seven-and-a-half years of imprisonment. Alkatiri was summonsed to appear in court over his alleged involvement in the distribution of weapons, but prosecutors dropped charges against the former Prime Minister in February 2007 because of a lack of evidence. FRETILIN's endeavour to deprive the President of his power to appoint the Prosecutor-General failed. Monteiro was eventually appointed on 16 July 2006.

On 8 November 2006 the non-partisan Vice-Minister for Justice, Isabel Ferreira, submitted her resignation letter following a request by the President of the Republic to the Prime Minister (ETAN, 2006j). Vice-Minister

Ferreira resigned because she was a paid member of the Commission for the Truth and Friendship Commission (CVA¹³⁴). According to the Prime Minister, the law enjoins Government members from having a double salary. Prime Minister Ramos-Horta advised Ferreira to continue to work for the CVA.

So, the resignation of Vice-Minister Ferreira demonstrated once again that President Gusmão and Prime Minister Ramos-Horta were on the same political wavelength. As predicted, the conflictual relationship between the President and the FRETILIN majority continued under divided government. The President's use of his appointment powers brought him into conflict with the FRETILIN majority when the latter disagreed with the nomination of the Prime Minister and the Prosecutor-General. The designation of the President of the Court of Appeal did provoke problems given that his reappointment was postponed until June 2007. When compared with cohabitation, the divided government situation was virtually conflict-free with regard to the appointment and dismissal process. It should be remembered that under cohabitation an institutional battle was fought by President Gusmão and Prime Minister Alkatiri over the appointment of an ambassador, the dismissal of two ministers and, eventually, over the resignation of the Prime Minister.

¹³⁴ Comissão de Verdade e Amizade.

Proclamatory powers

Under the Constitution, the President is empowered to address messages to the National Parliament and the country. In this context, we expect presidential messages more critical about parliamentary legislation than over government policy, given that the President and Prime Minister are political allies and the parliamentary majority was controlled by FRETILIN, the President's political opponent.

On 10 July 2006, President Gusmão made his first address to the Nation after the fall of the Alkatiri government. The President seized the opportunity to pressure Parliament to change the parliamentary election bill. The Bill for the Election of the National Parliament was prepared by FRETILIN in the middle of a political crisis on 15 May 2006.¹³⁵ The main point of divergence between the President and the FRETILIN majority concerned the electoral system. Gusmão favoured an electoral system that allowed smaller parties to be represented in Parliament. FRETILIN, for its part, preferred a system that reduced proportionality and weeded out the smaller parties from the legislature. In his speech delivered at the swearing-in ceremony for the new Prime Minister, Ramos-Horta, President Gusmão advised the Government to disregard the draft law, given that it 'harmed small parties and favoured only one' (Gusmão, 2012: 181). Moreover, the President called on the Parliament to 'approve laws that favour democracy and not one that serves the interest of only one group' (Gusmão, 2012: 181).

¹³⁵ Secretariado Do Parlamento Nacional (2012) *'Projectos e Propostas de Lei Vetados de 2002 a 2012'*, Dili: Parlamento Nacional da República Democrática de Timor-Leste. In author's collection.

In his next address to the Nation on 29 September 2006, President Gusmão reiterated his preoccupation with the electoral law when he stated that he would not like to see it 'killing minority parties' (Gusmão, 2012: 195). Together with the opposition, the President prepared another parliamentary election bill (States News Service, 2006). However, the Parliament chose to discuss only FRETILIN's proposal.¹³⁶ Following the decision, members of the opposition walked out of the Parliament in protest (ETAN, 2006d). The Parliament passed the parliamentary election bill on 18 December and the President promulgated it on 28 December 2006. The new law effectively ruled out half the parties running in the 2007 elections, some of which had previously won one or two seats in 2001 elections (Leach, 2009). On 16 May 2007, the Parliament accepted new amendments to the Law on the Election of the National Parliament, resulting in all opposition parties walking out in a unilateral protest against the act (MediaNet Press Release Wire, 2007). The main changes concerned the location of vote counts, which would now take place in the thirteen district capitals, rather than at each polling centre. The intention was to prevent the identification of voting patterns at the village level, but critics raised concerns that the new policy would reduce transparency and public legitimacy, and lead to increased complaints. President Gusmão was reluctant to accede to the changes but decided to promulgate the law on 29 May (Lusa, 2007c).

¹³⁶ Ibid.

The President's speech on 28 November 2006 stood in stark contrast to all other speeches. In his speech delivered during the commemoration of independence of the 4th Anniversary of Independence, the President lauded the work done by the Prime Minister. According to Gusmão, the Prime Minister made powerful strides towards national reconciliation when the Prime Minister appealed to martial arts groups to immediately stop their violence.¹³⁷ The President stated that it was 'a very good message from a leader of our Nation. I believe those words are shared by all the leaders and by the entire people. In today's message, I declare my total support to the appeal made by the Prime Minister' (ETAN, 2006c).

In addition to speeches to the Nation and in Parliament, the President used the media to criticize FRETILIN. The first media row between the President and FRETILIN's Secretary-General and deputy Alkatiri occurred after the publication of a UN report by the Independent Special Commission of Inquiry for Timor-Leste (COI) in October 2006. The UN commission was established following a request of the former Minister of Foreign Affairs, Ramos-Horta, to establish the facts and circumstances that led to the security crisis in April-June 2006 and to clarify responsibility and recommend measures of accountability for crimes and serious violations of human rights allegedly committed during the violence in April, May and June 2006.

¹³⁷ According to Scambary, political parties have used members of martial art groups to intimidate political opponents. For instance, the Korka martial art group is aligned to FRETILIN and Persuadaraan Setia Hati Terate (PSHT) linked to the PSD and PD. It is commonly believed that PSHT and Korka were involved in the 2006 crisis and several other violent conflicts. See: Scambary, J. (2009) 'Anatomy of a conflict: the 2006-2007 communal violence in East Timor', *Conflict, Security & Development*, 9, 265-288.

According to Alkatiri, the Commission was not independent and its report served to legitimise Alkatiri's resignation (Agência de Informação de Moçambique, 2006). In a lengthy interview published in a Timorese newspaper, Alkatiri claimed that the security crisis was a 'constitutional coup d'état' orchestrated by unnamed 'internal and external actors' bent on toppling its government and constitutional order (ETAN, 2006a). In response to Alkatiri's statements, President Gusmão accused the FRETILIN leadership of 'a total lack of political honesty' (ETAN, 2006a). The polemic continued in several newspaper articles in which the President blamed Alkatiri and the FRETILIN leadership for the violence and crisis (ETAN, 2006i).

The timing of the parliamentary elections caused another institutional row between the President and the parliamentary majority. When, in early February 2007, President Gusmão set 9 April 2007 as the date of presidential elections, FRETILIN threatened to withdraw from the parliamentary elections unless the parliamentary elections were held before 20 May 2007 (Dodd and Wilson, 2007; Lusa, 2007a). Under the electoral law, parliamentary elections must take place a minimum of 80 days after the presidential vote. This meant the parliamentary poll would be held in late June or early July. Former Prime Minister Alkatiri stated that presidential elections after 20 May 2007 were unconstitutional given that the Parliament was on the end of its mandate and, therefore, could not inaugurate a new president (Lusa, 2007b). The case was not brought to the Court of Appeal and FRETILIN participated in the parliamentary elections on 30 June 2007.

In the run up for the presidential and legislative elections, President Gusmão clashed with the FRETILIN majority on several occasions. First,

President Gusmão's affiliation with a new political party, the CNRT (National Congress for Timorese Reconstruction), brought him on a serious collision course with the FRETILIN leadership. In February 2007, President Gusmão announced that he would not run in the 2007 presidential elections. Instead, Gusmão established, together with members of FRETILIN Mudança, a splinter party of FRETILIN, the CNRT that reportedly intended to 'knock the FRETILIN party off its pedestal as the dominant political force and remove its majority in the parliament' (McDonald, 2007). The party's name was a deliberate reference to the former CNRT - the National Council of Timorese Resistance - a non-partisan body formed by Gusmão in 1998, which won the vote for independence from Indonesia in the 1999 referendum.¹³⁸ Alkatiri said that the use of the initials was 'cynical' and 'opportunistic' and threatened legal action (FRETILIN, 2007). 'When more than half of the electorate is illiterate, there is a moral obligation on all parties to be transparent and unambiguous in their identity, campaign messages and policy,' the former premier told journalists (FRETILIN, 2007). So, according to Alkatiri, the new party had been given a misleading name to confuse and deceive voters. The President, for his part, accused FRETILIN members of holding illegal weapons. In a response, the President of the Parliament, Francisco Lu-Olo Guterres, said that the President should be ashamed of himself for accusing FRETILIN members of illegal arms possession. (ETAN, 2007h).

¹³⁸ See Chapter 3.

Two days after the CNRT was formally launched, President Gusmão announced that he would support Prime Minister Ramos-Horta in the latter's bid for the presidency. President Gusmão told journalists that there was no alternative for him but to vote for Ramos-Horta and support his campaign (ETAN, 2007j). FRETILIN's Central Committee member Filomeno Aleixo accused outgoing President Gusmão of abuse of office after the President was broadcast on national television attending a rally in support of rival independent candidate Ramos-Horta. 'The President of the Republic is supposed to be an independent person and should not be endorsing candidates in elections,' Aleixo said. 'This is a clear abuse of his power as President. (...) The President has no right to use his office to try to hand pick his successor' (Micheltore, 2007).

Tension between the President and FRETILIN rose when the President accepted the leadership of the CNRT, which was labelled as 'a nest of liars' by former Prime Minister Alkatiri. 'We have to beware of CNRT because CNRT lies to people,' Alkatiri told journalists without elaborating (Adnkronos International, 2007). In a response, on 30 March, the President accused the ruling party of corruption, arrogance and mismanagement that had put the fledgling country on a path of violence and economic stagnation since its 2002 independence. In an interview with the Financial Times, Gusmão said that the young country's governing elite had built a record that compared unfavourably even with Indonesia's brutal 24-year rule, which came to a bloody end in 1999 following a United Nations-sponsored referendum (Aglionby, 2007). One week later, on 5 April 2007, President Gusmão spoke about bad governance. 'Key among these', he continued, 'was

the failure to provide adequate healthcare, education and other important social needs, or even to make sure people had enough to eat' (ETAN, 2007d).

FRETILIN reiterated that President Gusmão was using state power to influence national politics. The President of the Parliament and presidential candidate, Francisco Guterres (Lu-Olo), told journalists that the President of the Republic was not a neutral state figure but used his position of power to influence politics (ETAN, 2007i). In another tirade against the President, he accused Gusmão of corruption in the presidency (Gomes, 2007). According to Alkatiri, 'Xanana and Ramos-Horta will not resolve the crisis, but rather will increase the crisis,' (ETAN, 2007a).

A close reading of the official speeches and in particular his press statements revealed President Gusmão's underlying hostility towards the FRETILIN majority. Instead of persuading the FRETILIN majority of changing, for instance, the electoral law the President's speeches aimed to bring his objections against legislation to public attention. In the run up to the presidential and parliamentary elections Gusmão's press statements exposed and possibly deepened the political divergence between the President and Alkatiri, the leader of FRETILIN. Importantly, however, the President refrained from criticizing the Government and its policies. On the contrary, in his message on Independence Day on 28 November 2006 President Gusmão lauded the work done by the Prime Minister and declared his 'total support' for the Prime Minister's policy to restore peace in the country (ETAN, 2006c). In total, therefore, there were fewer critical presidential speeches under divided government because of Gusmão's ideological proximity to Prime Minister Ramos-Horta.

Conclusion

The hypotheses that were formulated at the beginning of this chapter predicted the locus and intensity of institutional conflict. Firstly, we expected to find conflict between President Gusmão and the FRETILIN parliamentary majority. Secondly, we expected to find little conflict over defence and foreign policy.

We found several incidences of conflict between the President Gusmão and the FRETILIN majority. Gusmão targeted several draft laws that were written by FRETILIN: one bill was sent to the Court for constitutional review and two other bills were vetoed. In addition, the President used proclamatory powers in an effort to put pressure on the National Parliament to change certain provisions in the draft law on parliamentary elections. The President's appointment powers also led to confrontations with the FRETILIN majority about the appointment of a new Prime Minister and Prosecutor-General Monteiro. For its part, Parliament did not confirm the President's declaration of the state of siege. We found no conflict between the President and the Prime Minister over defence and foreign affairs policy. In truth, during his term as Prime Minister and Minister of Defence, crucial legislation regarding Timor-Leste's national defence and foreign policy was promulgated.

When compared with cohabitation, divided government was a less conflictual political situation. President Gusmão did send more laws to the Court of Appeal and used more often his veto power. Yet, as noted earlier, the sample was very small in that under divided government only ten parliamentary laws were passed, of which two were vetoed. Regarding the

President's use of his appointment and dismissal powers, his power to pardon or to commute sentences, and his proclamatory powers, the cohabitation period was far more conflictual than the situation of divided government. Under cohabitation, the President and Prime Minister clashed four times over the appointment/dismissal of state officials, whereas during divided government such conflict was virtually absent. Likewise, the President's power to pardon and commute sentences led to four serious confrontations between Gusmão and Alkatiri, but did not provoke any conflict under divided government. Finally, President Gusmão criticised the Government in 19 different formal speeches between May 2002 and June 2006, whereas under divided government the President criticised FRETILIN in just two formal speeches.

Under Alkatiri's prime ministership the President's intervention in the appointment and dismissal process led to serious institutional conflicts between the two leaders whereas during the period of divided government period institutional conflict over selection and deselection of state officials was virtually absent. Likewise, no conflict occurred over the President's power to pardon or to commute sentences. Under cohabitation differences between President Gusmão and Prime Minister Alkatiri about whether Indonesian officers and Timorese pro-Indonesian militias should be pardoned almost led to a diplomatic dust-up with Indonesia. Finally, there were fewer critical presidential speeches due to the cooperative relationship between the President and the Prime Minister.

Overall, therefore, we found institutional conflict under divided government. Yet, this conflict was less intense when compared to the period

of cohabitation. The reason for the amelioration of the institutional relations was the ideological proximity between the President and Prime Minister which erased a large chunk of conflict from the political process. In the next chapter we will the effect of unified majority government on incidences of institutional conflict.

CHAPTER 6

Unified Majority Government

With the election of José Ramos-Horta as the new President and the appointment of Xanana Gusmão as the new Prime Minister, Timor-Leste entered a new political era. From August 2007 until May 2012, when Ruak replaced Ramos-Horta as President, there was a period of unified majority government.

In the literature, unified majority government refers to a situation where the president, the prime minister and the parliamentary majority belong to the same political force. In these circumstances scholars predict minimal conflict between the president and prime minister. However, if the president is supported by the prime minister and the parliamentary majority, there is the risk that the president may try to accumulate power.

We find that President Ramos-Horta and Prime Minister Gusmão were able to coordinate their different policy agendas. We also find that Ramos-Horta often acted outside of the president's constitutional authority. All the same, intra-executive conflict never escalated as Ramos-Horta always backed down.

The chapter is organised as follows. In the first section we describe the process of government formation and justify why we call this situation unified majority government. In the second section, we present the main hypotheses that are associated with unified majority government. We then present the main empirical findings. In the last section of the chapter we

conclude whether the Timorese politicians behaved according to the literature on political behaviour in semi-presidential systems.

Unified majority government in Timor-Leste

In the literature, unified majority government refers to a situation where the president and prime minister belong to the same political force and where the cabinet is composed of a single party or coalition of parties that, in turn, enjoy(s) the support of the majority of the deputies in parliament (Elgie, 2011a). We consider the period from August 2007 when Gusmão became Prime Minister to May 2012 when President Ramos-Horta left office to be a period of unified majority government. President Ramos-Horta's decision to appoint Gusmão as the new cabinet *formateur* opened the way for cooperation between the President, the Prime Minister and the parliamentary majority.

To some extent both men owed their position to mutual support. In April 2007 during the presidential campaign, President Gusmão had publicly supported Ramos-Horta's candidacy for the presidency. In media statements President Gusmão announced that he would vote for Ramos-Horta and the President attended Ramos-Horta's campaign rallies (ETAN, 2007j). In the lead up to the second round 'runoff' ballot on 9 May, Ramos-Horta was backed by all political parties bar FRETILIN and KOTA, which backed the FRETILIN candidate Francisco Guterres (Lu-Olo). At the second ballot, Ramos-Horta won 69.18 per cent of the votes and Guterres 30.82 per cent. Ramos-Horta was inaugurated as the second President of Timor-Leste on 20 May 2007. With Ramos-Horta as the new President, vice-Prime Minister and

FRETILIN member Estanislau da Silva was appointed the third, albeit interim Prime Minister of Timor-Leste. His cabinet was to last from 20 May until the parliamentary elections on 30 June 2007.

For reasons that we outlined in chapter 2, we will not examine this short period of divided government in any detail. However, it is worth noting that President Ramos-Horta did not allow FRETILIN to govern as it pleased. Under Da Silva's premiership, the President issued one veto threat and sent one bill to the Court of Appeal for constitutional review. Four days after his inauguration on 29 May 2007, President Ramos-Horta threatened to veto the First Amendment to the Law on Parliamentary Elections (ETAN, 2007c).¹³⁹ The President was reportedly unhappy with various articles in the law (Riseup, 2007b). Then, on 4 June, Timor-Leste's National Parliament passed the Bill on Truth and Measures of Clemency for Diverse Offenses, which provided an amnesty for the perpetrators of more than 180 specific types of crimes committed between 20 April 2006 and 30 April 2007. On 5 July, the President asked the Court of Appeal to provide advice as to whether the bill violated the Constitution. The Court of Appeal issued its opinion on 16 August, finding the bill in violation of the constitutional principle of equality because only crimes committed during a particular time period were covered (La'o Hamutuk, 2007). Parliamentary elections brought the interim government under Da Silva to an end. The new AMP government was inaugurated in early August 2007.

¹³⁹ Lei do Parlamento Nacional 6/2007 de 31 de Maio 'Alteração da Lei No 6/2006'.

The process of government formation was delayed partly because Timor-Leste's largest political parties, FRETILIN and CNRT, failed to form a coalition government. In the parliamentary elections FRETILIN obtained 29 per cent of the national vote and the CNRT 24 per cent (see Table 6.1).

Table 6.1: Parliamentary Election Results, 30 June 2007

Party*	Votes	%	Seats
FRETILIN	120 592	29.0	21
CNRT	100 175	24.1	18
PSD-ASDT	65 358	15.7	11
PD	46 946	11.3	8
PUN	18 896	4.6	3
AD	13 294	3.2	2
UNDERTIM	13 247	3.2	2
PNT	10 057	2.4	0
PDRT	7718	1.9	0
PR	4408	1.1	0
PDC	4300	1.0	0
PST	3982	1.0	0
UDT	3753	0.9	0
PMD	2878	0.7	0
Total	415 604	100	65

*See List of abbreviations

Source: Vasconcelos, P. B. D. and Cunha, R. S. D. (2009), p. 257.

The electoral system used in the 2007 parliamentary elections was a party-list proportional representation system. It was a closed list system where seats were assigned to candidates in the fixed order that their party had chosen.

The ASDT-PSD coalition came in third place with 15.7 per cent. The PD became the fourth largest party in Timor-Leste, obtaining 11 per cent. Given that no party gained a parliamentary majority, a coalition was necessary for a majority government, though Alkatiri argued that FRETILIN should form a minority government. President Ramos-Horta raised the prospect of an 'all-inclusive government' (Agence France Presse, 2007) comprising the four largest political parties. Meanwhile, the CNRT managed to form a post-election coalition with the ASDT-PSD and PD known as the Aliança da Maioria Parlamentar (AMP)¹⁴⁰. By contrast, FRETILIN with the support of AD (KOTA-PPT) could only secure a minority coalition. Though on 16 July the President stated that broad agreement had been reached for a government of national unity, FRETILIN and the AMP alliance could not decide on the choice of the Prime Minister (Dodd, 2007). On 30 July Parliament was sworn in and Fernando 'Lasama' de Araújo of the PD was elected President of Parliament. In electing PD leader Lasama as President of Parliament over FRETILIN candidate Aniceto Guterres by 44 votes to 21, the legislature made it clear that FRETILIN could not expect its support if it were to attempt to govern in its own right (Leach, 2009).

¹⁴⁰ Parliamentary Majority Alliance.

On 3 August President Ramos-Horta announced that he would ask the CNRT-led AMP to form a new cabinet if an agreement on a national unity government could not be reached before 6 August. The negotiations failed, so on 6 August the President invited Gusmão to form a cabinet. The cabinet composition was, however, not directly accepted by the President who claimed to have exercised 'informal veto' power (Lusa, 2007e). 'I have used the 'veto' and do not hesitate to use it again', Ramos-Horta told Portuguese press agency Lusa. 'Without imposing myself on the prerogatives of the Prime Minister-designate to form the Government, I have made clear who I think should stay or who should not' (Lusa, 2007e). President Ramos-Horta had rejected the Prime Minister's candidate for the post of Finance Minister. Instead, the President's candidate, Emilia Pires, was appointed Finance Minister.¹⁴¹ Ramos-Horta also added that he, together with the Prosecutor-General, would analyse the criminal record of each of the nominees before the Government was inaugurated. On 8 August the Government was sworn in, comprising the CNRT, ASDT-PSD and the PD. Prime Minister Gusmão took charge of the defence portfolio. He appointed Zacarias Albano da Costa (PSD) as the new Minister of Foreign Affairs and João Luís Guterres of the dissident FRETILIN faction *Mudança* as his vice-Prime Minister.

Meanwhile, in a statement to Parliament on 7 August, FRETILIN announced that it considered the AMP to have no legal basis and to be unconstitutional. The legal debate centred on the interpretation of the

¹⁴¹ Author e-mail exchange with former Prime Minister and President José Ramos-Horta, 19 April 2013.

Constitution which entitles the 'most voted party or the alliance of political parties with a parliamentary majority' to designate the Prime Minister, and thereby determine the composition of the government (Section 106). FRETILIN sought to claim that right as the 'most voted party' and declared that it would challenge the President's decision to grant that right to the Gusmão-led AMP coalition. FRETILIN also announced that it would temporarily suspend its participation in Parliament in order to explain its position to the electorate. Moreover, FRETILIN called for a campaign of civil disobedience. The tug-of-war about the interpretation of the Constitution went hand in hand with a wave of violence mainly in the heartlands of FRETILIN in areas such as Los Palos and Viqueque. At that point, President Ramos-Horta ordered the army to quell the unrest but did so without legal authority since there was no state of emergency and no consultations with other security organs (ICG, 2008). Though FRETILIN did not recognise the legitimacy of the AMP government and threatened to boycott parliament, the party returned to Parliament by the end of August 2007.

With President Ramos-Horta at the helm of the state and Prime Minister Gusmão leading the AMP coalition, Timor-Leste entered a period of unified majority government. A unified majority government differs from divided government executive in that the President and the parliamentary majority represented the same political force. So, whereas under the divided government the President and the parliamentary majority were political opponents, under the new situation the President, the Prime Minister and the Cabinet and the parliamentary majority were politically unified.

Hypotheses on unified majority government

According to Skach (2005b), unified majority government is semi-presidentialism's best subtype for minimizing institutional conflict. The legislative majority, she argued, increases the chances that governments will be more stable, which in turn lends governments a greater time horizon for accomplishing their agendas (Skach, 2005b: 15). In her work she cited the first two governments of the Weimar Republic as examples where consolidated majority governments supported the democratic system. Under President Ebert of the Social Democratic Party of Germany (SPD), both coalition governments were headed by an SPD Prime Minister who enjoyed strong support in the Reichstag. Skach (2005b: 16) warned that a unified majority government is not immune from conflicts that impede effective and efficient policy-making. Potential conflict is inherent in a semi-presidential constitution, she argued, given that the executive is divided into two heads. For example, personality differences between the president and prime minister may lead to increased disagreements over policy and over who should direct government. Nevertheless, Skach (2005b: 16) believed that a unified majority government maximises the chances that the president and the prime minister will have the same policy agenda, and will cooperate to accomplish their joint agenda. The first hypothesis derived from work on unified majority governments is, therefore:

H1: Under unified majority government, the President and Prime Minister are likely to regulate institutional conflict.

As noted earlier, the President traditionally has more constitutional/legal power in the area of defence and foreign affairs. Institutional conflict is thus more likely to hold back the political process in these policy areas. Similar to the divided government situation, the Prime Minister took charge of the defence portfolio. However, the Prime Minister appointed a member of the coalition party to become Foreign Minister. So, the second hypothesis is:

H2: Under unified majority government, the President and Prime Minister are likely to regulate institutional conflict over defence and foreign affairs.

Others associate unified majority government with hyper-presidentialism and democratic instability (Linz, 1994; Lijphart, 2004). They believe that a situation in which the president and the parliamentary majority belong to the same political force encourages the latter to act beyond his constitutional authority. This is because the prime minister becomes the president's subordinate. So, the situation in which the president's ambition is not countered by the ambition of the prime minister and the parliamentary majority makes it possible for the president to be even more powerful than in pure presidential systems (Lijphart, 2004; Samuels and Shugart, 2010). Thus, the third hypothesis is:

H3: The President is likely to accumulate power under unified majority government.

In the section ‘Observing institutional conflict’ in chapter 2 we identified the observable implications of conflict both generally as well as in defence and foreign policy. We pointed out that the observable implications of conflict are likely to manifest themselves through *formal* procedures, such as presidential vetoes and *informal* procedures, like veto threats. Under unified majority government we expect most of the observable implications of conflict to be largely absent. Yet, we may expect Parliament to correct the President when the latter acts beyond his constitutional/legal power. The Parliament could, for instance, reject the President’s request to make state visits.

Similar to the organization of the previous chapters, we will not test H1 and H2 separately given that the latter hypothesis is a sub-hypothesis of the former. Instead, we organize our findings into three categories of presidential power: legislative powers, special powers in the appointment and dismissal process, and proclamatory powers. In the conclusion, we reflect on whether there is evidence in these areas to support the hypotheses. By contrast, we will test H3 separately in the section ‘Accumulation of power’.

Presidential activism in the legislative domain

During unified majority government, President Ramos-Horta sent five bills to the Court of Appeal and twice threatened to use his veto power. Ultimately, however, Ramos-Horta vetoed only one bill. As noted in chapter 4, the President could not call for a referendum due to the lack of a referendum law.

The President doubted about the constitutionality of the rectified 2008 budget which was sent to for him approval in the summer of 2008.¹⁴² The bill proposed a doubling of total budgetary expenditure of which a significant part would be allocated to an Economic Stabilisation Fund, which was designed to combat rising oil, food and construction prices. The growing expenditure would be funded through a withdrawal of US\$686.8 million dollars from the Petroleum Fund. On 5 August 2008 Ramos-Horta announced that he would ask the Court of Appeal to rule on the constitutionality of the rectified budget. However, the bill was promulgated before the Court's ruling. Due to errors in the President's office, his staff had sent the document, signed by the President, to the National Parliament after Ramos-Horta's departure to the Philippines and China, even though the President had said that he would wait for the Court's ruling (Lusa, 2008). The Court of Appeal ruled that the rectified budget was unconstitutional, given that the newly created Economic Stabilisation Fund violated Timor-Leste's constitutional prohibition against secret budgets (Section 145) and Parliament's power to oversee budgetary operations (Section 95q, Section 115d). The Court also considered the additional withdrawal from the Petroleum Fund to be illegal as it violated the 2005 Petroleum Fund Law's requirements that petroleum resources must be managed for the benefit of current and future generations (East Timor Law and Justice Bulletin, 2008). The judgment was heavily criticised by the Government and the President of Parliament petitioned the

¹⁴² Lei do Parlamento 12/2008 de 5 de Agosto 'Lei que Aprova O Orçamento Geral do Estado para 2008 (1a Alteração a Lei No. 10-2007 de 31 de Dezembro)'.

Court, albeit unsuccessfully, to reverse its decision. In a last-ditch attempt to stop it from taking effect, Prime Minister Gusmão blocked the publication of the Judge's ruling in the official *Jornal da República* (McDonald, 2008). At the same time, the Superior Council for the Judiciary, which was headed by the Secretary-General of Gusmão's party, Dionísio Babo, declared that he would not accept the Court's ruling. After the Court's decision, Babo terminated the contract of the acting President of the Court of Appeal, the Portuguese Judge Ivo Rosa (McDonald, 2008). Given that the judgment was not retroactive and came towards the end of the fiscal year, it had limited practical effect; as at 31 December 2008 US\$396 million had been withdrawn from the Petroleum Fund (United Nations Secretary-General, 2009).

Ramos-Horta promulgated both the general and the rectified budget of 2010 but threatened that he would veto the budget of 2011 if the Government failed to include provision for road repairs in rural areas (ETAN, 2010f). On 28 January 2011, the budget was approved and sent to the President for approval. Six days later, the President decided to ask the Court of Appeal to review the constitutionality of the budget (La'o Hamutuk, 2011). The President doubted the constitutionality of establishing two new funds, the 'Infrastructure Fund' and the 'Human Capital Development Fund', worth respectively US\$599 and US\$25 million. The Infrastructure Fund was designed to finance infrastructural projects, like roads, bridges, ports, power grids etc. that would cost more than one million dollars or take more than one year to build. The Human Capital Development Fund was designed to improve the nation's education, health and justice sector. According to the President, the funds lacked transparency because the government failed to

provide details on how they would be spent. The President also believed that the transfer of US\$321 million from the Petroleum Fund was illegal. The 2011 budget was a 98 per cent increase over the original 2010 state budget. According to a CNRT deputy, the President had requested a constitutional review out of vengeance and not because he thought that the budget was unconstitutional: 'President Horta is frustrated, because Xanana [Gusmão] and AMP [the Parliamentary Majority Alliance] will not support his candidacy in 2012' (Riseup, 2011c). He added that the President bore ill will because the Government had rejected the request to set up an asylum seeker centre in the country (see below) and Parliament had removed US\$1 million that was allocated to his office. The Court of Appeal ruled that the budget bill did not violate the Constitution and the President promulgated it into law on 14 February 2011.

Again in May 2011, the President warned that the budget of 2012 should not exceed the budget of 2011, given that the government was incapable of executing previous budgets and 'probably will not succeed this year' (Ramos-Horta, 2011c). Ramos-Horta again threatened to veto the 2012 state budget because, in his opinion, too much money was spent by members of the cabinet on trips abroad and because he did not want to see 'any cent of money allocated for international visits' (ETAN, 2011). The President's critique prompted the Prime Minister to comment that the President of Republic could reject or disagree with the amount of the budget proposed but only the Parliament had the constitutional competence to approve it (Diário

Nacional, 2011). The 2012 budget was approved on 25 November 2011.¹⁴³ The President promulgated the budget on 15 December 2011 but expressed concern that it would be difficult to spend such a large amount of money with most political leaders preoccupied with the election of 2012.

President Ramos-Horta also sent two electoral bills to the Court of Appeal for constitutional review. On 18 June 2009 President Ramos-Horta asked the Court to review the constitutionality of the bill on the Election of Village Chiefs and Councils.¹⁴⁴ The Bill defined the scope of the community leadership structures and the procedures for their election. It provided that political parties were barred from submitting candidates and prohibited any link between candidacies and political parties. It also defined the electoral system, the competencies for the Suco¹⁴⁵ Chiefs and Councils and the allowance of Suco authorities. The bill was approved by Parliament on 4 June 2009. The President of Republic, in accordance to Section 149 of the Constitution of Timor-Leste, requested the Court of Appeal to undertake an anticipatory review of the constitutionality of the bill on the grounds, inter alia, of the non-participation of political parties, the violation of the principle of representation and the fact that Suco-bodies were not considered local government and were not part of the Public Administration. The President promulgated the bill on 8 July 2009 after the Court of Appeal had ruled that

¹⁴³ Lei do Parlamento Nacional 16/2011 de 21 de Dezembro 'Aprova o Orçamento Geral do Estado da República Democrática de Timor Leste para 2012'.

¹⁴⁴ Lei do Parlamento Nacional 3/2009 de 8 de Julho 2009 'Lideranças Comunitárias e Sua Eleição'.

¹⁴⁵ Composite villages.

the bill was constitutional. The first local elections took place on 9 October 2009.

The President also doubted the constitutionality of the Bill on Municipal Elections. President Ramos-Horta refused to sign the legislation and asked the Court to examine its constitutionality on 6 July 2009 (ETAN, 2009). In April 2010 the President suggested postponing municipal elections to 2013 given that no legislation on decentralization had been approved by Parliament and no political consensus existed on administrative boundaries and other related issues. Prime Minister Gusmão then announced that municipal elections would be postponed to 2014.

In June 2011, the President approved the bills on legislative and the presidential elections.¹⁴⁶ The bills provided that Timor-Leste citizens who were living abroad could participate in the presidential and parliamentary elections of 2012. Despite 'doubts and hesitations', the President promulgated the bills into law after the Prime Minister assured him that he would submit additional legislation that would regulate a mechanism to vote by mail (Lusa, 2011). Yet, following his election defeat in March 2012, which coincided with the end of unified majority government, the President harshly criticised both laws, accusing legislators of 'brainless stupidity' (East Timor Law and Justice Bulletin, 2012a). According to Ramos-Horta, legislation should 'facilitate people to participate [in elections], not to create difficulties'

¹⁴⁶ Lei do Parlamento Nacional 7/2011 de 22 de Junho 'Segunda Alteração à Lei 6/2006, de 28 de Dezembro - Lei eleitoral para o Parlamento Nacional'; Lei do Parlamento Nacional 8/2011 de 22 de Junho 'Segunda Alteração à Lei 7/2006, de 28 de Dezembro - Lei eleitoral para o Presidente da República'.

(East Timor Law and Justice Bulletin, 2012a). The electoral laws were not amended due to lack of quorum.

The fifth and last bill that was sent by Ramos-Horta to the Court for posteriori constitutional review concerned the First Amendment Statute of the Public Prosecutor's Office which passed in Parliament in June 2011.¹⁴⁷ The bill amended the 2005 Statute on the Public Prosecution Service and stipulated that only judges or prosecutors could be nominated Prosecutor-General (PG). If the Court found that the law violated the Constitution, the incumbent PG and former wife of the President, Ana Pessoa, would need to resign (Riseup, 2011b). President Ramos-Horta sent the bill to the Court of Appeal on 16 September 2011. After the Court held that the law was constitutional, the President promulgated the bill into law on 19 September 2011. The Court's ruling did not have practical effect for the PG remained in office. According to the President, it was agreed that the PG Pessoa should serve out her full-term.¹⁴⁸

During unified majority government, President Ramos-Horta vetoed the Law on Precedence in State Protocol.¹⁴⁹ On 19 April 2010 the Law was passed by Parliament and sent to the President for approval.¹⁵⁰ According to the President the Bill was written by people 'who had not the slightest notion

¹⁴⁷ Lei do Parlamento Nacional 11/2011 de 28 de Setembro 'Primeira alteração à Lei n.º 14/2005, de 16 de Setembro Estatuto do Ministério Público'.

¹⁴⁸ Author's e-mail exchange with former Prime Minister and President José Ramos-Horta, 19 April 2013.

¹⁴⁹ PPL 32/II 'Precedências do Protocolo do Estado'.

¹⁵⁰ Secretariado Do Parlamento Nacional (2012) 'Projectos e Propostas de Lei Vetados de 2002 a 2012', Dili: Parlamento Nacional da República Democrática de Timor-Leste. In author's collection.

of protocol and precedence. It was an absolute mess'.¹⁵¹ Whereas Ministry of Foreign Affairs made some suggestions on how to improve the bill the Parliament did not react so the legislation expired.¹⁵²

President Ramos-Horta's use of his power to pardon brought him into conflict with the parliamentary majority but also manifested the President's ideological proximity to Prime Minister Gusmão. In a concerted move, the President and Prime Minister Gusmão and with the 'reluctant' cooperation of the Minister of Justice released Maternus Bere (La'o Hamutuk, 2009). Bere, a former pro-Indonesian militia leader, was indicted by the United Nations Serious Crimes Unit for war crimes, crimes against humanity and genocide.¹⁵³ Bere's release sparked a heated debate in parliament. Deputies accused the leaders of obstructing the prosecution of those responsible for abuses during Indonesia's occupation of Timor-Leste. Yet, the President believed that restoring good relations with Indonesia was more important than 'prosecutorial justice' (Agence France Presse, 2009). In protest, the Parliament voted against the President's state visits to New York, Denmark and Germany (Timor Post, 2009). The President then threatened to resign if he was not permitted to travel abroad. The President's threat led the Parliament to reverse its decision (Agence France Presse, 2009). After

¹⁵¹ Author e-mail exchange with former Prime Minister and President José Ramos-Horta, 19 April 2013.

¹⁵² According to the former Foreign Minister, deputies disagreed on the hierarchy within Parliament. Interview with former Foreign Minister Zacarias da Costa, Dili, 16 May 2013.

¹⁵³ In February 2003, the UN/RDTL Serious Crimes Unit issued indictment 9/2003, charging Maternus Bere and others with 'crimes against humanity: murder, extermination, enforced disappearance, torture, inhumane acts, rape, deportation and persecution.'

Gusmão stated in a national televised address that he was responsible for Bere's release, the party bench leader of FRETILIN introduced a motion of no-confidence in parliament. The motion was rejected, however.

In 2010, a similar political compromise between the President and the Prime Minister was reached over the fate of ex-rebel leader Gastão Salsinha. Salsinha had been sentenced to ten years and eight months in prison for his role in the attacks on the President and the Prime Minister in February 2008. Prior to the Independence Restoration Day celebrations on 20 May 2010, the President received the government's proposal for approximately 100 prisoners to be pardoned. Yet, the President refused to pardon prisoners who, in the view of the Government, were eligible for a reduced sentence given that Salsinha and 23 other rebels were not included in the list. Three months later, in August 2010, all rebels who were convicted for their role in the attacks on the President and Prime Minister were freed. The President stated that the rebels were released because they were victims as well (Murdoch, 2010). In 2011 the Minister of Justice again expressed concern over the President's excessive use of his pardon power.¹⁵⁴ In 2011 the President asked the government to compose a list of 100 prisoners who were to be pardoned on Christmas day. In a press conference the Minister of Justice expressed her frustration about the President's intervention but

¹⁵⁴ Between 2007 and 2010 President Ramos-Horta granted 32 'full pardons' and 132 commutations. See: Center for International Governance Innovation (2011) 'Timor-Leste'. Available at <http://www.jsmp.minihub.org/English/webpage/reso/SSR%20Monitor%20-%20Timor-Leste%20Pardons%20-%20Jan%202011.pdf> (last accessed 30th August 2011).

explained that the Government could not do anything, 'because the President has prerogative power to give pardon to the prisoners' (Timor-Leste Media Development Center (TLMDC), 2011).

Tension between the President and the Justice Minister in this domain revolved around Rogério Lobato, the former FRETILIN Minister for Interior Affairs. Lobato was jailed in 2006 and was serving a seven-and-a-half-year term of imprisonment for manslaughter and illegally distributing weapons to civilians during the 2006 crisis. Lobato left Timor-Leste in August 2007 after the Court granted him permission to fly to Malaysia for medical treatment. The new AMP government had tried to prevent the plane from taking off but failed (Murdoch, 2007). In April 2008 Ramos-Horta announced that he would pardon Lobato despite the government's advice not to do so. The Justice Minister declared that Lobato was unlikely to benefit from any sentence reduction and she would 'take steps to bring him back by force if necessary' (Jolliffe, 2008). According to the Justice Minister and cousin of the ex-Minister, the President could only reduce sentences but not issue an amnesty, which was the exclusive domain of the parliament. However, the Justice Minister caved in to the President's demands. In a televised speech, the Justice Minister announced that the government had listed 100 prisoners for remission, including Lobato. Lobato was released from jail in June 2008.

So we observed some conflict between the President, the Prime Minister and parliamentary majority. President Ramos-Horta vetoed one law made by Parliament. He also doubted on the constitutionality of five other laws. Instead of vetoing them, he decided to request the Court to review whether these laws violated the Constitution. The President did not even

protest when the Government approved a law that was declared unconstitutional. The Government and Parliament, for their part, accepted that PG Pessoa could serve out her full-term despite the fact that according to the newly adopted law she needed to resign. Likewise, the President's sole veto was not overridden by Parliament but expired. It might also be noted that in the aftermath of his defeat in the 2012 presidential election, President Ramos-Horta vetoed three bills on land, namely the Land Law, the Expropriation Law and the Real Estate Fund Law.¹⁵⁵ Due to lack of quorum the bills were neither overridden nor amended (East Timor Law and Justice Bulletin, 2012b). The three vetoes were, however, issued after the period under consideration in this chapter.

The enactment of important national security legislation indicated that President Ramos-Horta agreed with Gusmão's defence policy. The February 2008 attacks, which resulted in the near fatal injury of the President and the wounding of the Prime Minister, prompted both leaders to work together to improve the internal security situation. Unlike in 2006 and 2007 under the situation of cohabitation and divided government respectively, Parliament confirmed the state of emergency and authorized the President to renew the state of emergency another three times.¹⁵⁶ In an

¹⁵⁵ Decreto do Parlamento Nacional 34/II 'Regime Especial para a Definição da Titularidade dos Bens Imóveis'; Decreto do Parlamento Nacional 35/II 'Lei das Expropriações'; Decreto do Parlamento Nacional 36/II 'Fundo Financeiro Imobiliário'. Secretariado Do Parlamento Nacional (2012) '*Projectos e Propostas de Lei Vetados de 2002 a 2012*', Dili: Parlamento Nacional da República Democrática de Timor-Leste. In author's collection.

¹⁵⁶ Lei do Parlamento 1/2008 de 11 de Fevereiro 'Lei que Autoriza o Presidente da República a Declarar o Estado do Sítio (De 11 de Fevereiro ate 13 de Fevereiro de

effort to capture the ones responsible for the attacks the police was placed under military command.¹⁵⁷ The so-called Joint Operation Command was disbanded in June 2008 but cooperation continued between the two security forces. In this context, the Ministry of Security and Defence was established which brought the armed forces and the police under a unified authority.¹⁵⁸ Moreover, a package of three laws was passed in March 2010 that was designed to create a legislative basis for legitimating joint police-army operations.¹⁵⁹ The successful cooperation between the military and the police forces was exceptional, to say the least. Barely two years previously, security forces were involved in deadly confrontations, forcing the Government to call for foreign troops to restore peace and stability. So, due to the close cooperation between Ramos-Horta and Gusmão crucial defence policy laws passed under divided government and, in particular under unified majority government. The President's use of his pardoning power brought him into conflict with the Minister of Justice and the parliamentary majority. Yet, his forgive-and-forget policy enjoyed full support of the Prime Minister.

2008)'; Lei do Parlamento 2/2008 de 13 de Fevereiro 'Lei que Autoriza o Presidente da República a Renovar a Declaração do Estado de Sítio (De 13 de Fevereiro ate 23 de Fevereiro de 2008)'; Lei do Parlamento 4/2008 de 22 de Fevereiro 'Lei que Autoriza o Presidente da República a Renovar a Declaração do Estado do Sítio (de 23 de Fevereiro ate 23 de Março de 2008)'; Lei do Parlamento 7/2008 de 22 de Abril 'Lei que Autoriza o Presidente da República a Renovar a Declaração do Estado de Sítio no Distrito de Ermera (de 22 de Abril ate 21 de Maio 2008).

¹⁵⁷ Decreto do Presidente da República 45/2008 de 22 de Fevereiro, Resolução do Governo 3/2008 de 17 de Fevereiro .

¹⁵⁸ Decreto-lei do Governo 31/2008 de 13 de Agosto 'Orgânica do Ministério da Defesa e Segurança'.

¹⁵⁹ Lei do Parlamento Nacional 2/2010 de 21 de Abril 'Lei de Segurança Nacional'; Lei do Parlamento Nacional 3/2010 de 21 de Abril 'Lei de Defesa Nacional'; Lei do Parlamento Nacional 4/2010 de 21 de Abril 'Lei de Segurança Interna'.

Presidential activism in the appointment and dismissal process

The Constitution of the Democratic Republic of Timor-Leste gives the President certain powers to appoint or dismiss state officials. In the area of Foreign Affairs, the Constitution empowers the President to appoint and dismiss ambassadors, following a proposal by the government, permanent representative and special envoys (Section 87b). In the area of Defence, the Constitution requires the President to appoint and dismiss, following a proposal by the Government, the General Chief of Staff of the Defence force, the Deputy General Chief of Staff of the Defence Force, and the Chiefs of Staff of the Defence force, after consultation with the General Chief of Staff regarding the latter two cases (Section 86m).

President Ramos-Horta opposed Timor-Leste's foreign policy towards Myanmar. A rift emerged between the President and Foreign Minister Da Costa about the question as to whether to vote in favour of or against UN resolutions condemning the internal situation in Myanmar. On 23 December 2009, the Timorese Ambassador to the United Nations, Nelson Santos, voted in favour of a General Assembly resolution on human rights violations in Myanmar, which was passed by 86 votes to 23 with 39 abstentions. Santos was continuing Timor-Leste's previous policy of supporting this annual resolution, following guidance from the President (Roughneen, 2010). However, Da Costa instructed Santos to abstain from this vote so as to be more in line with ASEAN countries. When Santos voted in favour of the

resolution, Da Costa fired him.¹⁶⁰ The President opposed the abrupt decision of the Minister of Foreign Affairs, even more so because Prime Minister Gusmão had not been consulted on the recall of the Ambassador to the UN.¹⁶¹

Nelson's dismissal was widely criticised in Parliament with deputies saying that Da Costa had damaged the country's image (Timor Post, 2010). During the first week of February 2010, Nelson Santos, the President, the Foreign Minister and deputy Prime Ministers had several discussions in Dili about how to salvage the situation (La'o Hamutuk, 2010). In December 2010 Nelson Santos was appointed Ambassador to Belgium and the European Union.¹⁶² The problem was solved given that the UN did not adopt any new resolutions on Myanmar after 2010.

The President mediated in a dispute between Prime Minister Gusmão and Foreign Minister Da Costa in an effort to save the coalition government. Tension between the two Ministers arose after Gusmão recalled the country's ambassadors to Dili to attend the Development Partners meeting in April 2010. The Prime Minister's recall order, however, overrode the Foreign Minister's previous order that the ambassadors should remain at their posts. According to Da Costa, the Prime Minister bypassed his orders. Therefore, he threatened to resign. The Foreign Minister's party, the PSD, backed Da Costa and announced that it would withdraw from the coalition Government if the Foreign Minister were fired. For his part, the Prime Minister threatened to

¹⁶⁰ Interview with former Foreign Minister Zacarias da Costa, Dili, 16 May 2013.

¹⁶¹ Author's e-mail exchange with José Ramos-Horta, 19 April 2013.

¹⁶² Decreto do Presidente da República 55/2010 de 1 de Dezembro 'É nomeado Embaixador Extraordinário e Plenipotenciário, da República Democrática de Timor-Leste, o Sr. Nelson Santos, para a União Europeia e o Reino da Bélgica'.

call early elections in the event that Da Costa tendered his resignation. In an effort solve the standoff, President Ramos-Horta urged both parties to immediately solve the problem (Riseup, 2010c). He also promised to hold dialogue with the Prime Minister and the PSD leadership, including the Foreign Minister. Eventually, Da Costa remained in his post as Minister of Foreign Affairs and, hence, institutional conflict did not lapse into political instability.

In sum, we observed some friction between the President and the Minister of Foreign Affairs about the dismissal of the Timorese Ambassador to the United Nations, Nelson Santos. Yet, the conflict did not escalate and Santos was offered another position. We also observed the President's willingness to help the Prime Minister's AMP Government to survive after one of its coalition partners, the PSD, threatened to withdraw from the Government. The President also asked for a cabinet reshuffle but accepted the Prime Minister's refusal to do so.

Proclamatory powers

The President may use proclamatory powers to influence day-to-day government. The Constitution authorises the President to address messages to the National Parliament and the country (Section 86e). Presidential speeches can either support or criticise the government and its policies.

Ramos-Horta used presidential proclamations to express his opinion on the state budgets. In 2007 the President publicly supported 2007 budget, urging Parliament to approve it. In his 2008 New Year's speech Ramos-Horta showed a similar confidence in the Government when he told the people of

Timor-Leste not to worry given that the state budget of 2008 'would benefit thousands of people in the nation' (Ramos-Horta, 2011a). However, from August 2008 onwards, the President demonstrated an increasing preoccupation with, in particular, the growing size of the budget. As noted earlier, the President sent the 2008 rectified budget to the Court of Appeal for constitutional review. In a speech to the Nation in 2009 President Ramos-Horta expressed his concerns about the growth of the budget and openly questioned whether the Government was capable of executing it (Radio Televisaun Timor-Leste, 2009).

The 2010 presidential proclamations revealed a President who had become increasingly intolerant of corruption within the Government's offices. In his New Year's speech in early January 2010 the President accused the Government of gross mismanagement, waste and corruption. The President concluded his tirade by saying that he respected his 'brother' Gusmão and trusted that under his leadership the Fourth Constitutional Government would perform better to serve the people (Ramos-Horta, 2010). In early January 2010 Ramos-Horta told a New Zealand newspaper that he did not want a nation whose name was dirty in the international world due to corruption and hence had asked the Prime Minister Gusmão to reshuffle his cabinet (Pacific Scoop, 2010). Yet, Gusmão refused. The Prime Minister believed the members of his government were competent and said that a reshuffle would destabilize the fragile coalition (ETAN, 2010h). Despite increasing concern about corruption and the growing budget, the President promulgated both the general and the rectified budget of 2010 but

threatened to veto the 2011 budget if the government failed to include provision for road repairs in the rural areas (ETAN, 2010f).

Presidential proclamations also disclosed that Ramos-Horta supported the Government's defence policy and in particular its approach to resolving the so-called 'petitioners problem'. Problems with the petitioners started back in 2006 when army commander Taur Matan Ruak decided to fire 600 F-FDTL soldiers. Their dismissal led to large anti-government demonstrations, which ultimately forced former Prime Minister Alkatiri to resign. The petitioners' problem was not resolved under Ramos-Horta's premiership, partly because Ruak continued to refuse to accept the soldiers back into the army. During the 2006 crisis, Alfredo Reinado, a former military police commander of the F-FDTL, along with some of his subordinates and former police officers broke ranks and posed an additional threat to the political stability of the country. Reinado portrayed himself as the protector of the 600 ex-soldiers. He was captured but escaped from jail in August 2006. His group was held responsible for the violence that flared up in the eastern part of the country after the formation of the Government in August 2007. In November 2007, Reinado promised the petitioners that if they were not reinstated in the army he would lead his soldiers down to Dili. In early January 2008 a video became available on the internet in which Reinado accused Prime Minister Gusmão of being the 'mastermind' of the 2006 crisis (ICG, 2008). On 11 February 2008, an armed group led by Reinado carried out separate armed attacks against the President and the Prime Minister, resulting in the near fatal injury of the President, the wounding of the Prime Minister, and the death of Reinado himself. However, his death opened up

new opportunities to resolve the standoff between the government and the petitioners.

Initially, President Ramos-Horta and Prime Minister Gusmão differed as to whether the former soldiers should be allowed to re-enter the army and, if so, whether they needed to go through a recruitment process again. Before the attacks in November 2007, President Ramos-Horta had promised Reinado that he and his followers could enter the army without going through a re-application process. By contrast, in March 2008 Prime Minister Gusmão told the petitioners that they were no longer welcome in the army. The President and Prime Minister then agreed to a 'compromise solution'; ex-soldiers could rejoin military but needed to go through a recruitment process whereas those who wanted to return to civilian life would receive a financial compensation from the Government (ABC Premium News, 2008).¹⁶³ President Ramos-Horta urged the petitioners to accept the Government's offer (ETAN, 2008). In June President Ramos-Horta said that the petitioners' problem was resolved given that more than 90 per cent of the ex-soldiers had accepted the government's proposal to be reintegrated into civilian life and thus to leave the armed forces (Ramos-Horta, 2011a).¹⁶⁴ Some argue that the surge in oil and gas money allowed the AMP government to pursue a strategy of 'buying peace' with the petitioners (ICG, 2013). To be sure, according to data provided by the World Bank (2013), Timor-Leste's economy grew from

¹⁶³ Decreto do Governo 12/2008 de 11 de Junho 'Integração dos ex-militares na vida civil'.

¹⁶⁴ According to former Prime Minister Alkatiri, no petitioner has reentered the army. Interview with Dr. Marí Alkatiri, Dili, 17 May 2013.

an estimated 2,42 per cent in 2002 to 10,6 per cent in 2011 mainly because of the oil and gas revenues from the Timor Sea.¹⁶⁵ The International Crisis Group (2013) reported that these revenues gave the AMP Government the resources 'to spend its way out of conflict'. So, the large inflow of revenues from the exploitation of oil and gas may have enabled the Government to prevent another outbreak of violent conflict.

As noted previously, in the wake of the separate attacks against the President and Prime Minister the police was placed under military command¹⁶⁶ The so-called Joint Operation Command launched 'Operasaun Halibur' (Operation Gather Up), which led to the surrender of several armed groups and, eventually, the leader of the petitioners, Gastão Salsinha. The Joint Operation Command was disbanded in June 2008 but cooperation continued between Timor-Leste's security forces. A new Ministry of Security and Defence was established which brought the armed forces and the police under a unified authority.¹⁶⁷ In his speech to the National Parliament in 2009 Ramos-Horta spoke about 'very positive developments' in the area of national security due to cooperation between the President, Prime Minister and Parliament (Ramos-Horta, 2009).

Ramos-Horta tried to change Government policy regarding the exploitation of the Greater Sunrise oil and gas field through presidential

¹⁶⁵ World Bank (2013) '*Timor-Leste*'. Available at

<http://www.worldbank.org/en/country/timor-leste> (last accessed 20 April 2013).

¹⁶⁶ Decreto do Presidente da República 45/2008 de 22 de Fevereiro, resolução do Governo 3/2008 de 17 Fevereiro.

¹⁶⁷ Decreto-lei do Governo 31/2008 de 13 de Agosto 'Orgânica do Ministério da Defesa e Segurança'.

proclamations. The Greater Sunrise field is located in the Timor Sea in-between North Australia and Timor-Leste. Under the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS), neither country can exploit the Greater Sunrise fields without approval from the other side.¹⁶⁸ The CMATS treaty lays down an equal distribution of revenue derived from the oil and gas field in the Timor Sea. In addition, it stipulates that Australia pays Timor-Leste US\$13.9 billion in exchange for postponing talks on the maritime boundary between the countries for the next 50 years. Australia's largest oil company, Woodside Petroleum Ltd., together with joint venture partners ConocoPhillips, Royal Dutch Shell, and Osaka Gas are licensed to develop the Greater Sunrise. The CMATS treaty provides that if Timor-Leste or Australia does not ratify the Sunrise exploitation plan by February 2013, then either country can unilaterally cancel most of the provisions of CMATS treaty. In mid-2008, the Sunrise Joint Venture assessed five development concepts regarding the processing of oil and gas from the Greater Sunrise, including a Liquefied natural gas (LNG) processing plant in Darwin, a floating LNG and an onshore LNG plant in Timor-Leste. The report decided against piping gas to a liquefied natural gas plant in Timor-Leste and favoured processing the gas either in Darwin, via a pipeline, or by building a floating plant in the Timor Sea. However, in Timor-Leste, state officials opted for the LNG plant on the southern coast of Timor-Leste. It was argued that the plant would boost the economy and develop a skilled workforce. Ramos-Horta

¹⁶⁸ Chapter 4 and 5 provide more information on the CMATS agreement.

declared that he would prefer to forgo the whole Greater Sunrise project than 'to surrender to the dictates of a bunch of oil executive millionaires' (Grigg and Garvey, 2008). The Government supported the President's statement and contracted the Malaysian energy company Petronas in conducting a feasibility study into the Timorese option.

Political consensus among Timor-Leste's state officials on how best to develop the Greater Sunrise fields started to break down in early 2010 when the Government decided to take a harder line in the negotiations with oil company Woodside. In a press release the Government stated that it would not approve any development plan that did not include a pipeline to Timor-Leste and an LNG plant on the south coast of Timor-Leste. The Government also announced that the energy company Petronas was approached to develop the offshore Great Sunrise field. The President, by contrast, argued that the best option for Timor-Leste would be to agree to a floating platform (Riseup, 2010d). Ramos-Horta sought a middle way solution to resolve the stalemate between the Government and Woodside over the exploitation of the Greater Sunrise. The President's statements were not well received in parliament. Deputies from both the governing coalition parties and FRETILIN urged the President 'to be quiet and not to comment' because his interference complicated negotiations with Woodside (ETAN, 2010d). Despite Parliament's warnings, Ramos-Horta reiterated in an interview with the Australian radio channel ABC that it was time to break the impasse in negotiations and finally develop the Greater Sunrise oil and gas field between Timor-Leste and Australia. According to the President, Timor-Leste could not afford to further postpone the negotiations given that 'the country has a

growing population and growing needs' (Everingham, 2010). Whereas Ramos-Horta thus hinted that a floating platform would be the best way forward, the government reasserted Dili's resolve to veto the floating LNG or Darwin expansion options.

Notwithstanding the President's promise to give up his engagement in the Greater Sunrise negotiations (ETAN, 2010e), in January 2011 Ramos-Horta argued that the Government should be more flexible in talks with Woodside over the Greater Sunrise project. Speaking in Dili, Ramos-Horta urged the Government not to close the door on talks (Dodd, 2011). He also suggested that it should seek the help of former Prime Minister Alkatiri (Riseup, 2011d). The National Petroleum Authority (ANP), led by the AMP government, refused to cooperate with the former Prime Minister. As Timor-Leste entered the 2012 election season, the Greater Sunrise negotiations became fodder for political squabbles, with the President blaming the Government for making the pipeline a matter of national pride, saying it should be decided on the best available technical and economic advice (Murdoch, 2012b). In an interview on 28 April 2012 Ramos-Horta said he was 'frankly perplexed' that for 12 months the Government had refused to talk with the Woodside-led consortium. According to the President, the government even organised demonstrations against Woodside executives in Dili. 'We must be the only country in the world that has organised demonstrations against international investors,' he said (Murdoch, 2012a).

Despite these 'institutional irritants' Ramos-Horta largely supported the Government and its policies. In his speeches he defended the Government's approach to resolve the petitioners' problem but criticised the

Government with respect to two policy issues, namely the annual budgets and its position on the Greater Sunrise project. As compared to cohabitation where the President systematically criticised the Government on a wide range of government policies, presidential speeches under unified majority government reveal only moderate institutional conflict. More importantly, the President abandoned attempts to change the policy after he realized that his initiatives were not supported by the Prime Minister. In so doing, institutional tension did not escalate.

Accumulation of power

Critics of semi-presidentialism hypothesise that unified majority government encourages a president to accumulate power. The president's power grab, it is argued, may destabilise young democracies. Our findings confirm that President Ramos-Horta over-stepped his constitutional power, using presidential proclamations as executive orders. Presidential proclamations serve to support the President's main function, namely to guarantee national independence and unity of the State and the smooth functioning of democratic institutions (Section 74(1)). Whereas presidential proclamations confer controlling powers to the President, Ramos-Horta attempted to use presidential proclamations as governing powers.

In his address to the nation in August 2007, the President announced the establishment of an 'anti-poverty task force' to combat poverty (Ramos-Horta, 2011a). As early as the 2007 presidential elections, Ramos-Horta promised to serve as a 'President of the Poor' (Ramos-Horta, 2011b). He pledged to remain dedicated to eradicating poverty in Timor-Leste through

improved public health and education. Yet, his election promises contradicted the Constitution, which does not endow the President with executive powers in the area of economy and development. The 2007 budget allocated a mere 250 million dollars to the anti-poverty task force for the transition period between July and December 2007 (Hamutuk, 2007). Despite the fact that the parliamentary majority approved the budget, a growing number of deputies turned against the presidential initiative. Initially, protests came from the FRETILIN bench who argued that it was not the responsibility of the President to reduce poverty (ETAN, 2007e). Later, deputies of the coalition government shared FRETILIN's concerns, suggesting the President 'should work within his duties rather than mixing everything randomly' (ETAN, 2007f). FRETILIN then requested the Court of Appeal to carry out an abstract review of constitutionality of the bill. Much to the President's dismay, the Court ruled that the poverty reduction program under the Office of the President of the Republic was unconstitutional (ETAN, 2007b). Notwithstanding the Court's ruling, the President declared he would continue to use funds that have been allocated to his department in order to combat poverty (Riseup, 2007a).

Ramos-Horta also acted beyond his constitutional authority in the area of infrastructure. In October 2008, the Government revealed to the public, through a press communiqué, that thirteen districts in Timor-Leste would have electricity 24 hours a day by the end of 2009. The Government had just signed a contract with Chinese Construction Company to build three electric power-generating stations, based on used generators that burn heavy fuel oil. In the budget speech to Parliament in early January 2009 the Prime

Minister guaranteed that all sub-districts would have electricity by the end of 2010. However, the project encountered growing criticism of its expense, design, environmental impacts, procurement procedures and legal processes. Environmental groups warned the plants would create acid rain, water pollution, toxic solid waste, air pollution and greenhouse gas emissions. In his speech to the UN Security Council President Ramos-Horta promised that an independent adviser would be appointed to oversee the implementation of the project 'to ensure that the project would be in full compliance with World Bank environmental standards and the Kyoto Protocol' (United Nations Security Council, 2009). In a speech to the National Parliament the President reiterated that he had asked the Government to hire an independent body to carry out an environmental impact assessment and a technological evaluation to determine the risks that the project posed to the environment. According to the President, the Prime Minister promised to accept 'whichever recommendation the independent body produced' (Ramos-Horta, 2009). Despite the fact that the President encroached on executive power, the Government acted on the President's wishes and contracted an Italian consultant, Electroconsult and Bonifica, SpA (EB), to supervise the project. In response to EB's report, the government decided to re-assign the responsibility for building the power stations to another company. The reassignment further delayed the project and in November 2011 the first generators were inaugurated. During the ceremony the President lauded the Prime Minister for his 'brilliant idea of setting up this power plant' (Riseup, 2011a).

President Ramos-Horta also used his proclamatory power to criticize the Minister of Infrastructure, Pedro Lay, and his Secretary of State, José Manuel Carrascalão. In January 2010 the President even threatened to take Minister Lay to Court because of the poor conditions of Timor-Leste's road network (ETAN, 2010c). In March 2011 he reiterated his concerns with the conditions of the roads, saying the Minister of Infrastructure and Secretary of State for Infrastructure were not working well (ETAN, 2010g). As noted earlier, Ramos-Horta even threatened not to promulgate 2011 general state budget if the government failed to include road repair in rural areas (Timor Post, 2010b).

Ramos-Horta again over-stepped presidential powers when he asked the Provedoria for Human Rights and Justice (PDHJ), the Timor-Leste ombudsman, to investigate whether the Ministry of Tourism, Commerce and Industry (MTCI) had been involved in a corruption scandal (East Timor Action Network (ETAN), 2009). The Constitution stipulates that the ombudsman examines citizens' complaints against public bodies, certifying the conformity of the acts with the law in order to remedy injustice (Section 27). Apart from the fact that the President is not a citizen in juridical terms and, additionally, represents a public body, the Parliament is responsible to call for a commission of inquiry to start an investigation into cases of corruption in which government officials are involved. The corruption scandal, known as 'rice-gate', encompassed government contracts that were awarded to companies linked to the Prime Minister's daughter and to companies part-owned by the wife of the Minister of Minister of Economic Development, João Gonçalves. In November 2009, the Minister responsible

for managing the rice contracts, Gil Alves, was being questioned by a Parliamentary Commission of Inquiry. The Commission was established to investigate the facts and circumstances of the rice contracts. In an effort to combat the growing number of corruption cases in which government officials were involved, the President urged the Prime Minister to reshuffle his cabinet. Although Ramos-Horta's request was supported by a parliamentary majority, the President was allowed by the Constitution to ask for the dismissal of cabinet ministers. Alves, the Minister of Tourism, Commerce and Industry, then said he would resign from his post if the Prime Minister decided to reshuffle the cabinet (ETAN, 2010b). As noted earlier, Gusmão refused to reshuffle his cabinet.

President Ramos-Horta was intent on accumulating power in the area of foreign affairs as well. The Constitution requires the President to conduct, in consultation with the Government, any negotiation process towards the completion of international agreements in the field of defence and security (Section 87 d). In the summer of 2010 Australian Prime Minister Julia Gillard announced the plan to establish an asylum seeker centre in Timor-Leste. Under the plan, asylum seekers arriving in Australia by boat would first be taken to Timor-Leste to be processed. Ramos-Horta proclaimed that Timor-Leste supported the idea and hence welcomed a conversation with Gillard. However, the President failed to consult the government beforehand. Notwithstanding the President's transgression, Gusmão supported the President's position and announced he was prepared to consider Australia's proposal. By contrast, deputies of both the coalition government and the opposition were strongly opposed to the plan. In July 2010 Parliament

adopted a resolution that rejected the establishment of the asylum-processing centre in Timor-Leste.¹⁶⁹ The President and Prime Minister ignored the resolution and continued negotiations with Australia. Deputies then urged the President 'not to interfere' and simultaneously warned the Prime Minister 'to respect the parliament' (Riseup, 2010a; Riseup, 2010b). Protest in Parliament against the establishment of the asylum centre may have persuaded the Prime Minister to change his position given that in April 2011 Gusmão publicly rejected the Australian proposal. By contrast, the President insisted that he had not yet turned his back on the plan (Salna, 2011). The issue was resolved when the Australian government withdrew its proposal to build an asylum centre in Timor-Leste.

Ramos-Horta unconstitutionally intervened during the Government's negotiations with oil company Woodside over the development of the Greater Sunrise oil and gas field. Whereas the Government rejected the company's proposal and decided to discontinue further negotiations, President Ramos-Horta invited Woodside to the Presidential palace to discuss the latest developments. The Government, openly displeased with the President's behaviour, stated that it was 'completely unacceptable' for both Woodside's chief executive, Don Voelte, and the President to by-pass the established mechanisms (Shoesmith, 2013). The anger of the government at the President's unconstitutional intervention was reflected in the fact that

¹⁶⁹ Resolução do Parlamento 20/2010 de 12 de Junho 'Rejeita a Instalação em Timor-Leste de um Centro de Detenção e Processamento de Migrantes'. Hayward, A. (2010, 13th July) 'Timor votes 'no' to asylum centre'. Available at: <http://www.lexisnexis.com>.

the AMP coalition forbade the State Secretary for Natural Resources, Alfredo Pires, from publicising the feasibility study's findings (ETAN, 2010a). The Government's overt refusal to include the President in the Greater Sunrise negotiations prompted the latter to declare to withdraw from the Greater Sunrise negotiations (ETAN, 2010e).

In sum, our findings confirm that during unified majority government Ramos-Horta pushed for more power. President Ramos-Horta frequently over-stepped his constitutional power. Despite the presidential transgressions which, at times, provoked intra-executive tension conflict did not escalate because President Ramos-Horta always backed down and abided by the Constitution.

Conclusion

An argument in favour of semi-presidentialism is that unified majority government encourages the president, prime minister and parliamentary majority to regulate institutional tensions, thereby preventing the escalation of institutional conflict both generally as well as in defence and foreign affairs. Critics of semi-presidentialism expect a period of hyper-presidentialism under unified majority government.

We confirm that under unified majority government the institutional relations were largely characterized by cooperation. In the legislative domain, the President vetoed one bill and asked the Court of Appeal to review the constitutionality of five bills. Parliament did not override the presidential veto. The close cooperation between the President and Prime Minister led them sometimes to ignore the Court's rulings. In addition, their

decision to 'pardon' war criminal Bere led to a motion of no-confidence in Parliament and a threat from Parliament to refuse to grant the President permission to travel abroad. Yet, the parliamentary majority did not support the motion and bowed to the President's demands after the latter threatened to resign. President Ramos-Horta also intervened in the appointment and dismissal process of state officials. Again, we found that disagreements did not escalate because the political leaders were able to reach a compromise. In official speeches and press statements the President revealed that he was largely positive about the work done by the Government. During the second half of his term Ramos-Horta expressed growing concern with the ever-expanding budget and the growing number of corruption cases that involved government officials.

An argument against semi-presidentialism is that a unified majority government may encourage presidents to accumulate power. We found that President Ramos-Horta frequently over-stepped his constitutional authority. In an interview conducted in 2008, Ramos-Horta indicated his preference for a powerful French-style presidency, an 'enlightened autocracy' (ICG, 2008). Our findings suggest that as President, from 2007 to 2012 Ramos-Horta tested and sometimes exceeded the limits of his constitutional authority. Yet, the President did not push through his political agenda when he found that his initiatives were not supported by the Prime Minister. Therefore, we cannot confirm the argument that unified majority government generated hyper-presidentialism.

Compared with the situation of cohabitation and divided government, institutional relations were the least conflictual under unified majority

government. In the latter situation the President vetoed 1.5 per cent of the parliamentary laws whereas under cohabitation the veto rate was 9 per cent. President Horta preferred to send legislation to the Court instead; 7.6 per cent of the laws were subject to constitutional review during unified majority compared to 6.6 per cent under cohabitation. It should be noted that in the legislative domain the President was more active during the divided government situation: one out of five parliamentary laws were vetoed and one out of ten laws were sent to the Court of Appeal. In addition we found that the institutional relationship between the President and the parliamentary majority was most conflictual; only during this government situation did the parliamentary majority override (four times) presidential vetoes. We also found that unlike under cohabitation and divided government Parliament confirmed the state of emergency in February 2008 and agreed to renew the state of emergency another three times. Due to the close cooperation between Ramos-Horta and Gusmão crucial defence policy laws were passed under divided government and under unified majority government. In the next chapter we provide an overview of the findings, draw conclusions about the hypothesised effects of semi-presidentialism, and identify avenues for future research.

CHAPTER 7

Conclusion

The purpose of this final chapter is to summarise and draw together the main insights, findings and arguments of this research. First, the main arguments of this study will be re-iterated, followed by a summary of the findings. The implications and context of this research and how this project contributes to the literature on semi-presidentialism and democratic performance will be explored. Finally, some suggestions for further research, based on the findings of this study, will be considered.

Semi-presidentialism and democratic performance

The aim of this thesis has been to test arguments about semi-presidentialism and democratic performance. Critics argue that semi-presidentialism provokes a damaging power struggle that threatens the stability of young democracies, whereas some others maintain that the system can allow power-sharing between competing forces, increasing the prospects of democratic consolidation. The literature thus suggests the following causal sequence:

Figure 7.1: Causal chain between semi-presidential situations and democratic performance

Semi-presidential situations -> Conflict -> Democratic Performance

The literature identified four semi-presidential government situations - divided minority government, cohabitation, divided government and unified majority government. Each of these types is associated with a particular level of conflict. Critics of semi-presidentialism expect more conflict under divided minority government than under the other three periods and more conflict under cohabitation than under a divided government. Unified majority government is believed to be the least conflictual institutional configuration, though some scholars fear that it will lead to an accumulation of presidential power that can be damaging for democracy. Using Timor-Leste as a case, this project tested whether the semi-presidential government situations generated the level of conflict that theory predicts.

The findings

This work tested propositions that are associated with cohabitation, divided government and unified majority government in Timor-Leste. From May 2002 to June 2006 there was a period of cohabitation followed by a period of divided government from July 2006 to May 2007. Unified majority government, finally, was generated in August 2007 and ended in March 2012.

We used a list of observable implications to identify institutional conflict in the three situations and decided that the absence of these indicators corresponded to the absence of conflict. Chapter 3 discussed political elite relations in Timor-Leste before the introduction of the semi-presidential system. By doing so, we aimed to control for institutional conflict prior to independence. This chapter focused on the development of *informal*

power structures given that the Timorese were largely excluded from *formal* power structures, which were dominated by Indonesia, the occupying power. We concluded that the Timorese political elite was not a monolithic entity when Timor-Leste adopted a semi-presidential system.

Chapter 4 examined the effects of cohabitation, the situation where the president and prime minister are from opposing parties and where the president's party is not represented in the cabinet. Critics of semi-presidentialism suggest that young democracies may collapse under the weight of institutional conflict. This is because the president faces a government and a parliamentary majority that pursue a policy that is diametrically opposed to his or her own political agenda. Excessive competition between the president and prime minister may cause policy paralysis with the president and prime minister clashing over state power. This context is thought to encourage the military to assume all power, in an attempt to restore the political process. Institutional conflict is likely to occur over defence and foreign affairs, it is suggested, given that the president traditionally holds more power over these policy areas. By contrast, others argue that semi-presidential democracies will not collapse under cohabitation. Their main argument is that the president has an incentive to work with the prime minister because both actors have a stake in keeping the system going (Elgie, 2011a: 31).

Chapter 4 demonstrated that the legislative framework that provided power for the President to fully carry out his mandate was incomplete. For some time between 2002 and 2006, the President's power to influence policy was limited to political vetoes and proclamatory powers. Despite the weak *de*

jure position of President Gusmão vis-à-vis the FRETILIN majority we observed institutional conflict between President Gusmão and Prime Minister Alkatiri on the one hand, and between President Gusmão and the parliamentary majority, on the other. In the legislative domain President Gusmão vetoed four laws and requested the Court of Appeal three times to review the constitutionality of legislation. The parliamentary majority, in turn, cancelled out the influence of the President in the legislative process. First, it overrode all presidential vetoes and even adopted a law that was rejected by both the President and the Court on constitutional grounds. Also, the parliamentary majority was reluctant to authorize the President to assume emergency powers.

The tug-of-war concentrated on Timor-Leste's defence and foreign policy. Most laws that were vetoed concerned laws in the area of national security. The President and Prime Minister also disagreed over appointments and dismissals of state officials, such as the appointment of an ambassador, the dismissal of the Minister of Interior and the Minister of Defence and the dismissal of 591 soldiers. The President's competence to play an active role towards the conclusion of international agreements in the field of defence and security caused a damaging power struggle between Gusmão and Alkatiri on the question of whether the President was authorized to call in foreign troops to restore the peace and the rule of law. Chapter 4 concluded that cohabitation facilitated conflict because it provided an institutional forum which allowed for political opponents to govern against each other.

Chapter 5 tested the arguments that associate divided government with political conflict. Divided government refers to the situation in which a

legislative majority is held by a party or pre-election coalition which is different from that of the president (Shugart as cited in Elgie, 2001: 4). In this type of government, Ramos-Horta, a Gusmão ally, was appointed Prime Minister and Minister of Defence. Except for the Minister of Defence and Foreign Affairs, all other cabinet ministers were FRETILIN members. FRETILIN continued to control Parliament. We tested whether conflict between the President and the FRETILIN majority continued and whether Ramos-Horta's appointment as head of Government and Defence Minister reduced institutional conflict.

We found that under divided government the locus of institutional conflict shifted from a President-Prime Minister conflict to a President-Parliament conflict. President Gusmão's sanctions did not target Prime Minister Ramos-Horta but the FRETILIN parliamentary majority. Gusmão vetoed two bills that were drafted by Parliament and asked the Court of Appeal to review the constitutionality of another bill that had been drafted and passed in Parliament. Being aware of the Prime Minister's limited influence in Parliament, President Gusmão tried to influence the content of legislation directly in his addresses in Parliament. The President's appointment powers also led to confrontations with the FRETILIN majority about the appointment of a new Prime Minister and Prosecutor-General Monteiro. For its part, the parliamentary majority did not confirm the President's declaration of the state of siege. In line with the expectations, we found no conflict between the President and the Prime Minister over defence and foreign affairs policy. In truth, during Ramos-Horta's term as Prime

Minister and Minister of Defence, crucial legislation regarding Timor-Leste's national defence and foreign policy was promulgated.

Chapter 6 tested the hypotheses that associate unified majority government with reduced levels of conflict. Again, we tested arguments for and against the semi-presidential system. One hypothesis predicts that unified majority government generates some institutional conflict but also expects that the system encourages political actors to regulate these conflicts. Another hypothesis says, or implies, that a situation in which the president is supported by the prime minister and the parliamentary majority may encourage the president to accumulate power.

We concluded that under unified majority government the institutional relations were largely characterized by cooperation. President Ramos-Horta vetoed only one law which, in turn, was not overridden by the parliamentary majority. Instead of vetoing legislation, Ramos-Horta preferred to request the Court to review the constitutionality of five bills. We also found that the ideological proximity between the two leaders sometimes led them to ignore the Court's rulings for the sake of maintaining good institutional relations. President Ramos-Horta also intervened in the appointment and dismissal process of state officials but once again disagreements did not escalate because the political leaders were able to reach a compromise. In official speeches and press statements the President revealed to be largely positive about the work done by the Government although during the second half of his term Ramos-Horta expressed a growing concern with the ever-expanding budget and the growing number of corruption cases that involved government officials.

We found evidence that President Ramos-Horta tested and sometimes exceeded the limits of his constitutional authority. Yet, disagreements never lead to serious confrontations between the two leaders. President Ramos-Horta preferred not to force through his political agenda when he understood that the Prime Minister did not support his political initiatives. Therefore, we concluded that in Timor-Leste unified majority government did not generate hyper-presidentialism.

In sum, the empirical chapters demonstrated that the three types of semi-presidential situations – cohabitation, divided government and unified majority government - generated different types and levels of institutional conflict. Critics of semi-presidentialism believe that cohabitation provokes more institutional conflict than divided government and unified majority government. They also expect more institutional conflict under a divided government than under unified majority government. So, did the change in the political situation correspond with a linear decrease of institutional conflicts in Timor-Leste?

We confirm that there was more conflict under cohabitation than under the other two periods and more conflict under a divided government than under unified majority government. First, institutional relations improved after a period of ‘conflictual cohabitation’. The main reason for the decline of institutional conflict was the appointment of Ramos-Horta as the new Prime Minister which narrowed the gap between the President and Prime Minister. Their ideological proximity could, however, not prevent confrontations between the President and the parliamentary majority in the legislative domain; compared to cohabitation President Gusmão sent

relatively more laws to the Court of Appeal and more often used his veto power during the divided government situation. As noted earlier, the sample was very small in that under divided government only ten parliamentary laws were passed, of which two were vetoed. Yet, whereas during Alkatiri's prime ministership the President's use of his appointment and dismissal powers led to serious institutional conflicts between both political actors such conflicts were virtually absent under divided government. Likewise, no conflict occurred over the President's use of his power to pardon or to commute sentences. The President supported the Prime Minister's defence and foreign policy as a number of crucial laws in the area of defence and foreign policy were quickly enacted and promulgated. Finally, the tone of the often highly critical speeches of President Gusmão changed during Ramos-Horta's term in office where the President once lauded the work done by the Prime Minister.

Second, compared with divided government, institutional relations were the least conflictual under unified majority government. The main reason for improved institutional relations was that less conflict occurred between the President and the parliamentary majority. Indeed, under divided government President Ramos-Horta (continued to) face a parliamentary majority dominated by FRETILIN. In the new political situation, Gusmão's coalition controlled the majority of seats in Parliament. Accordingly, the veto rate was 20 per cent under divided government and 1.5 per cent during unified majority government. In a similar fashion, 7.6 per cent of the laws were subject to constitutional review during unified majority compared to 10 per cent under divided government. We also found that unlike under

cohabitation and divided government Parliament confirmed the state of emergency in February 2008 and agreed to renew the state of emergency another three times. The close cooperation between Ramos-Horta and Gusmão not only prompted speedy legislation in the area of defence but also brought the President into conflict with the parliamentary majority when, for instance, he used his pardoning power to free Maternus Bere. The presidential speeches also demonstrated that institutional relations improved under unified majority government. Under divided government President Gusmão criticized parliamentary bills, called for a state of emergency and in press statements accused FRETILIN of corruption, arrogance and mismanagement that had put the fledgling country on a path of violence and economic stagnation since its 2002 independence. Under unified government, the President only occasionally resorted to speeches to criticize legislation. In one of his most critical speeches the President concluded his tirade by saying that he respected his 'brother' Gusmão and trusted that under his leadership the Fourth Constitutional Government would perform better to serve the people. Once again, the cooperative relationship between the President and Prime Minister ward off institutional conflict.

So, overall, we found more conflict under cohabitation than under the other two periods. In addition, we found more conflict under divided government than under unified majority government. Some people may argue that the amount of institutional conflict between cohabitation and the period of unified majority government do not differ much. We think that Timor-Leste's post-conflict situation together with the Constitution limited

institutional conflict under, principally, cohabitation. Timor-Leste's quick but violent separation from Indonesia created a legal vacuum that may have preempted institutional conflict. Several institutions that enable the President to restrain the executive power of the Government did not work when the country became independent in 2002. The Court of Appeal only started to function in June 2003 (Judicial System Monitoring Programme, 2003a). Before this time Gusmão could neither refer legislation to the Court for constitutional review nor issue a constitutional veto. Also, the absence of an organic law on the regulation of a referendum deprived the President from submitting issues of national interest to a referendum. In addition, the President could not call for new elections because the Parliament had not passed electoral laws. Finally, President Gusmão could not seek advice from the Council of State and the Supreme Council of Defence and Security because neither consultative institution was established until March 2005. The Constitution determines that in these areas presidential decisions need to be preceded by consultation with the Council of State and/or with the Superior Council for Defence and Security. Therefore, from 2002 to 2005 the President could not use emergency powers or declare war or make peace with a foreign country due to the absence of necessary legislation. These legal voids thus deprived the President of several powers that would have allowed him to restrain executive power and oversee the legislature. Relatively moderate institutional conflict during cohabitation may also stem from the role that the Constitution ascribes to the president of Timor-Leste. To be sure, the Constitution of Timor-Leste gives the president few powers to oppose the government's policy. As noted in Chapter 2, the powers of the president of

Timor-Leste are not proactive powers. They are reactive, corresponding to the notion of an arbiter. The president may seek to influence the overall policy of a government, for instance, through the exercise of veto powers, by calling a referendum or directing a message to parliament, but the president may seldom, if at all, actively propose a course of action, as his or her powers of initiative are limited. Put differently, Timorese presidents are arbiters who protect the rules of the decision-making process and, therefore, are largely excluded from day-to-day government. Accordingly, there was less institutional conflict over policy in Timor-Leste than there might have been in other countries with different constitutional powers.

The implications for the literature on semi-presidentialism and democratic performance

While it is difficult to make universal generalisations on the basis of only one case with a distinct political background, nonetheless the findings of this research may have some implications for the literature on semi-presidentialism and democratic performance.

Firstly, our findings support arguments that are levelled against semi-presidentialism. Critics are right to be concerned about semi-presidentialism in that it facilitates institutional conflict. Under cohabitation pre-existing conflicts were institutionalized as the system allowed political opponents to govern against each other. We found more conflict under cohabitation than under the other two periods. We also found that unified majority government was the least conflictual institutional configuration under semi-presidentialism. So, consonant with the general criticism that is levelled

against semi-presidentialism we confirm that the existence of a president with executive *and* legislative powers introduces institutional conflicts into the system.

Secondly, we found that some policy areas were more susceptible to institutional conflict than others. During cohabitation President Gusmão was particularly active in the area of defence and foreign policy. As noted before, the President has more constitutional/legal power to influence defence and foreign policy, when compared with other policy areas. Whereas during cohabitation power-sharing over defence policy led to a power struggle, under divided government and unified majority government it encouraged efficient policy-making between the President and Prime Minister. More generally, the notion that certain presidential powers provoke more conflicts than others brings an important nuance to arguments that associate semi-presidentialism with democratic performance.

Discussion

Critics argue that semi-presidentialism generates institutional conflict that may lead to democratic collapse; supporters believe that institutional conflict does not kill semi-presidential democracies. This project tested only the first part of the argument, namely whether semi-presidential situations cause institutional conflict. The general argument against semi-presidentialism does not hold when there is no evidence of institutional conflict. We found that semi-presidentialism facilitated institutional conflict in Timor-Leste between 2002 and 2012. Yet, data provided by Freedom House and Polity IV on democratic performance do not record the collapse of Timor-Leste's

democratic regime. Does the fact that Timor-Leste's democracy did not collapse under the weight of institutional conflict imply that critics of semi-presidentialism were wrong after all?

We argue that Timor-Leste's democratic system did not collapse because both institutional and non-institutional factors may have mitigated deleterious effects of institutional conflict on the performance of its democratic regime. Institutional factors include Timor-Leste's semi-presidential constitutional formula which gives the President only limited power to influence policy. We might extrapolate from this observation that if the President were endowed with more constitutional/legal power, institutional conflict would have been more likely.

Non-institutional factors such as Timor-Leste's post-conflict context may have limited institutional conflict as well. In May 2002, Timor-Leste not only became a new democracy, it also became a new state. Hill and Saldanha (2001) noted that the country's starting point could hardly have been more difficult. In 1999 Timor-Leste was one of the poorest countries of the world with a per capita income of about US\$300. During the 1999 violence Timor-Leste's GDP declined by about one-third; over 70 per cent of the territory's physical infrastructure was destroyed; more than a quarter of the population was displaced; and the largely Indonesian civil service fled (Hill and Saldanha, 2001). Dili lost one-third of its electricity-generating capacity and government buildings as well as the files that constituted the formal institutions of government (such as titles to land, and records of civil registration and education) were destroyed. Timor-Leste was left with only two power engineers, 20 per cent of its secondary school teachers, 23

medical doctors, one surgeon and no pharmacists (World Bank, 2005). The World Bank reported that in 1999 'Timor-Leste's civil service simply ceased to exist' (1999). Timor-Leste lacked a high-level bureaucratic capacity, given that during Indonesian occupation senior echelons were dominated by non-Timorese. In addition, the country did not have a constitution or a legal system. In short, modern state institutions needed to be built up from scratch. In such circumstances, political actors may have had different priorities than to obstruct the political process.

In addition, it should come as no surprise that Timor-Leste's political institutions were either absent or weak in 2002 when the semi-presidential system was introduced. Feijó (2006) points out that, in particular, the Presidency was weak. The presidential impotence was, according to him, not only a result of Timor-Leste post-conflict background but also a deliberate strategy of FRETILIN to keep the President's powers to an absolute minimum. The FRETILIN government enjoyed the support of a disciplined parliamentary majority and the party's *de facto* alliance with the ASDT gave the party the two-thirds majority it needed under the Constitution to approve revisions to it (Smith, 2004a). So, FRETILIN's powerful position provided the party with the opportunity to purposely obstruct legislation that would strengthen the position of the President vis-à-vis the Government.

External funding and technical assistance may also have increased the relative weakness of the President vis-à-vis the Government. The Presidency was Timor-Leste's newest state institution and started to function after the presidential election of April 2002. Under the UN transitional administration, the predecessor of the Parliament, the Constituent Assembly, began its duties

in September 2001 and the First Constitutional Government, which took office after the ceremonial restoration of Independence, succeeded previous governments that had been operating since the installation of the First Transitional Cabinet in July 2000. In addition, most international advisors worked for the Government and very few, if any, were assigned by the UN to assist the President. By UN Resolution 1599 (2005), the Security Council authorized the deployment of up to 45 civilian advisers to strengthen Timor-Leste's main state institutions. Of the 45 international advisers, only 2 had been assigned to assist the Office of the President whereas 27 had been deployed across various Government offices. According to Feijó (2006), one advisory post was never filled, whereas another advisor finished his or her job in March 2006. The World Bank (2006) recognised the imbalance of resources between the different institutions and called upon the Government to ensuring that independent institutions had statutory budgets approved by Parliament. In sum, the urgent need to fill the legislative vacuum, the restricted constitutional powers of the President to influence policy, and the unequal distribution of UN resources are factors that may have decreased the level of institutional conflict.

Others may point to the influence of international forces on democratization in Timor-Leste. International actors, like the United Nations, may have played a supporting role in helping a fledgling democracy complete a democratic transition. To what extent international forces have been responsible for the survival of Timor-Leste's young democratic regime? Although Timor-Leste's democracy did not collapse, the situation in 2006 was perilously close to civil war (Kingsbury, forthcoming). Local political

actors were incapable to regain civilian control over the rebelling soldiers and needed to call for foreign assistance to establish law and order. So, foreign assistance may have prevented Timor-Leste's democracy from collapsing.

Overall, we found empirical evidence to support different arguments that hold that institutional factors are responsible for institutional conflict. Despite the fact that semi-presidentialism facilitated institutional conflict Freedom House and Polity IV do not record the collapse of Timor-Leste's democratic regime. We outlined several factors that may have confounded the relationship between semi-presidential types of government and Timor-Leste's democratic performance. In the next section we identify some avenues for future research.

Future research

This project demonstrated that semi-presidentialism facilitated institutional conflict in Timor-Leste. It supports the criticism of semi-presidentialism that a president with executive and legislative powers alongside a prime minister and parliament introduces competing incentives into the system. Yet, our study cannot confirm the argument that institutional conflict leads to poor democratic performance. In Timor-Leste, democracy survived despite institutional conflict. Future research should test the relationship between institutional conflict and the performance of semi-presidential democracies.

In Timor-Leste institutional conflict manifested itself predominantly in the area of defence and foreign policy. Whereas the President and the Prime Minister could align their foreign policy agenda a disagreement

between both leaders over defence policy escalated into a serious political crisis. More research is needed to test whether defence policy is, in fact, the Achilles heel of semi-presidential democracies. Is the semi-presidential system inherently weak in keeping the military under civilian control?

In addition, the literature on semi-presidentialism largely ignores the existence of non-partisan prime ministers and presidents. Indeed, the effects of semi-presidential systems are premised on the notion that political actors are partisan. Yet, general studies on the effects of political institutions insist that the presence of non-partisan actors have far-reaching implications on democratic performance (Neto and Strøm, 2006). The study on semi-presidentialism would benefit from more research on the effects of non-partisan actors on the performance of semi-presidential democracies.

Finally, the literature on semi-presidentialism predominantly focuses on the system's institutional flaws. Little effort has been spent to compare the relative merits of president-parliamentarism and premier-presidentialism with presidential and parliamentary systems. Under which of the four systems do young democracies live longer? Recent work concluded that democracies with a president-parliamentary form of semi-presidentialism run a greater risk of collapse than premier-presidential systems (Elgie, 2011a). However, not much is known whether presidential-parliamentary systems score better than presidential systems in terms of democratic performance. Moreover, Shugart and Carey (1992: 286) posit that presidentialism and premier-presidentialism properly crafted 'might even offer better opportunities for conflict regulation than would a parliamentary regime'. Again, so far this hypothesis has not been tested.

Looking ahead

One of the first countries that adopted a semi-presidential system was the Weimar Republic in 1919. According to the members of the Eighth Commission of the Constituent Assembly the system was designed to tackle inadequacies of the French Third Republic that was dominated by the parliament:

According to the intention of the Constituent Assembly, the President of the Reich was conceived of a democratic counterweight to parliamentary omnipotence in order to avoid the excesses of French 'absolute parliamentarism'... These two authorities, the legislature as well as the President, originate from that same source, that is, from the will of the people. Because of that, we have the guarantee that if the will of one of these supreme organs goes astray in some direction, the other would correct it. We wind up therefore having, in the person of the President, a counterweight to the omnipotence of the Reichstag (cited in Skach, 2005b: 43).

Semi-presidentialism was thus thought to provide an equilibrium institutional solution. Yet, in the search of balance of power between the branches, the president lacked reciprocal responsibility before the Reichstag. Seen through the lens of the framers of the semi-presidential system, the president's intervention in the day-to-day affairs of the state is a way to counterbalance the power of the parliament. The president intervenes so as to prevent the parliament from dominating the political system. Following this line of reasoning, presidential intervention in the political process would be beneficial to democratic performance. Institutional conflict, the political outcome of presidential activism in day-to day government would signal

democratic viability rather than forewarn the definitive collapse of democracy.

We found lots of institutional conflict in Timor-Leste. Perhaps counter intuitively, Timor-Leste's democracy survived. This outcome does not imply that institutional conflict encourages democratic viability and that critics of semi-presidentialism were wrong after all. As noted earlier, many other factors may have prevented democratic collapse. Foreign soldiers and police, for instance, may have played an important role in the restoration of peace and security in Timor-Leste in 2006. Nevertheless, our findings do raise the question of whether institutional conflicts are truly 'bad' for democratic performance.

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